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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 125.

DANIEL RED BIRD ET AL., CITIZENS OF THE CHEROKEE NATION BY BLOOD, APPELLANTS,

vs.

THE UNITED STATES.

No. 126.

THE CHEROKEE NATION, APPELLANT,

vs.

THE UNITED STATES.

No. 127.

FRANCIS B. FITE ET AL., INTERMARRIED WHITE PERSONS, CLAIMING TO BE ENTITLED TO CITIZENSHIP IN THE CHEROKEE NATION, APPELLANTS,

vs.

THE UNITED STATES.

No. 128.

THE PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE, APPELLANTS,

vs.

THE UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

FILED OCTOBER 6, 1905.

(10,091 10,092 10,093 10,094)

(19,921, 19,922, 19,923, 19,924.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1905.

No. 419.

DANIEL RED BIRD ET AL., CITIZENS OF THE CHEROKEE NATION BY BLOOD, APPELLANTS,

vs.

THE UNITED STATES.

No. 420.

THE CHEROKEE NATION, APPELLANT,

vs.

THE UNITED STATES.

No. 421.

FRANCIS B. FITE ET AL., INTERMARRIED WHITE PERSONS, CLAIMING TO BE ENTITLED TO CITIZENSHIP IN THE CHEROKEE NATION, APPELLANTS,

vs.

THE UNITED STATES.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 20, 1905.

No. 422.

THE PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE, APPELLANTS,

vs.

THE UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

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1 *Petition of Citizens of the Cherokee Nation by Blood.*

In the Court of Claims of the United States. Departmental No. 76.

IN THE MATTER OF ENROLLMENT OF PERSONS CLAIMING RIGHTS IN CHEROKEE NATION BY INTERMARRIAGE

vs.

THE UNITED STATES.

I.—*Petition. Filed April* 13, 1903.

To the Honorable the Chief Justice and Associate Justices of the Court of Claims of the United States.

The petition of Daniel Red Bird, David Muskrat, and Daniel Gritts appearing for themselves and numerous citizens of the Cherokee Nation by blood, by their attorney, John J. Hemphill, respectfully shows to this Court:

First. That the above-named petitioners and all persons for whom they appear are citizens of the Cherokee Nation by blood whose rights to participate in the distribution of the common property and funds of the Cherokee Nation of whatever kind or character has never been denied or questioned.

Second. That the citizens of the Cherokee Nation, by blood, who are interested in the above-entitled cause number several thousand persons, and are therefore too numerous to be mentioned herein by name.

2 Third. That by a certain letter from the Secretary of the Interior, dated February 24th, 1903, and addressed to this Court certain controverted questions of fact and law that have arisen in connection with the applications of persons claiming rights in the Cherokee Nation by intermarriage, to be enrolled as entitled to participate in the distribution of the common property and funds of the Cherokee Nation that are now pending in the Interior Department were submitted to this Court for its findings and opinion, as follows:

"DEPARTMENT OF THE INTERIOR,
February 24, 1903.

To the Court of Claims:

SIRS: By section 21 of the Act of June 28, 1898 (30 Stats., 498, 502), the Commission to the Five Civilized Tribes was directed to make rolls of citizenship of the several tribes, enrolling, among others, 'such intermarried white persons as may be entitled to citizenship under Cherokee laws.' By the Act of May 31, 1900 (31 Stats., 221, 236), said Commission was authorized to continue the exercise of authority theretofore conferred on it by law with a direction as follows: 'But it shall not receive, consider, or make any record of

any application of any person for enrollment as a member of any tribe in Indian Territory who has not been a recognized citizen thereof, and duly and lawfully enrolled or admitted as such, and its refusal of such applications shall be final when approved by the Secretary of the Interior.' By the Act of July 1, 1902 (32 Stats., 716, 720), further direction was given as to the making of the rolls of citizens of the Cherokee Nation as follows:

SEC. 25. The rolls of citizens of the Cherokee Nation shall be made as of September first, nineteen hundred and two, and the names of all persons then living and entitled to enrollment on that date shall be placed on said roll by the Commission to the Five Civilized Tribes.

3 SEC. 26. The names of all persons living on the first day of September, nineteen hundred and two, entitled to be enrolled as provided in section twenty-five hereof, shall be placed upon the roll made by said Commission, and no child born thereafter to a citizen, and no white person who has intermarried with a Cherokee citizen since the sixteenth day of December, eighteen hundred and ninety-five, shall be entitled to enrollment or to participate in the distribution of the tribal property of the Cherokee Nation.

SEC. 27. Such rolls shall in all other respects be made in strict compliance with the provisions of section twenty-one of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), and the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one).

A controversy has arisen as to the rights of white persons intermarried with Cherokee citizens and a protest has been filed with this Department on behalf of a large number of citizens of the Cherokee Nation by blood, against the enrollment of intermarried persons "so as to recognize their right to participate in the distribution of any of the common property of the Cherokee Nation of whatever kind or character." It is asserted on the one hand that the Cherokee laws have never recognized the right of "intermarried citizens" to share in the distribution of the property of the Nation and, on the other hand, that the Cherokee laws as well as the laws of Congress recognize those persons who have been married to Cherokee citizens in accordance with the laws of the Cherokee Nation relating to marriage as full citizens of such Nation entitled to share equally with full-blood citizens in the property of the tribe.

The controverted questions involved in this matter now pending before this Department, are respectfully submitted for your findings and opinion in accordance with the provisions of Section 2, the Act of March 3, 1883 (22 Stat., 485). The protest referred to,

4 which states the questions involved, is enclosed herewith, and upon receiving information that any other papers in the possession of the Department are needed they will be promptly transmitted.

Very respectfully, E. A. HITCHCOCK, *Secretary.*"

Fourth. That said above-named petitioners and all the citizens of the Cherokee Nation by blood, are directly interested in the above-entitled cause in that they, together with certain other persons, citizens of the said Nation by adoption or nativity, the number of whom your petitioners are unable to state, are the owners in common of a large tract of land in the Indian Territory aggregating about 4,420,076 acres, which said tract of land is now being or about to be allotted in severalty among the citizens of the Cherokee Nation entitled to participate in the distribution of the common property of the Cherokee Tribe, in accordance with the provisions of the Act of Congress entitled "An Act to provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes," approved July 1, 1902, which act was consented to, ratified and confirmed by a vote of the people of the Cherokee Nation on the 7th day of August, 1902.

Fifth. That by the provisions of said act each person entitled to participate in the distribution of the common property of the Cherokee tribe has the right to select and have allotted to him a tract of land equal in value to one hundred and ten acres of the average lands of the Cherokee Nation, which, according to the appraisement of said lands heretofore made as required by law, is equal to $325.60 in money, and if any persons are admitted to participate in such allotment of said lands wrongfully and without right the interest of the rightful owners thereof in the surplus land or lands remaining after all having right thereto have received their allotments will be proportionately diminished.

Sixth. That after the allotment of the said lands of the Chrokee Nation as provided in the said Act of July 1, 1902, it is estimated that there will remain unallotted and not otherwise disposed of as town sites or reserved for public purposes, a large quantity of said lands, equal to about ten thousand allotments of the appraised value of about $325.60 each, or about $3,256,000 in all, as the common property of your petitioners and other citizens of the Cherokee Nation who are entitled to participate in the distribution of the common property of the Cherokee Tribe, subject to be distributed among your petitioners and such other citizens of the Cherokee Nation, or to be sold for their benefit as may hereafter be provided by agreement, and if the said persons claiming rights in the Cherokee Nation by intermarriage are recognized as being entitled to distributive shares in the common property of the Cherokee Tribe, the shares of your petitioners in said surplus lands will not only be diminished, but said surplus lands themselves would be materially reduced in quantity, all to the great damage and injury of your petitioners in their just rights and dues.

Seventh. That besides the lands hereinbefore described, your petitioners, the citizens of the Cherokee Nation by blood, and other persons referred to in paragraph fourth hereof, are jointly owners of large sums of money now held for their benefit in the Treasury of the United States aggregating about $2,719,288.90, which by the

act above mentioned, it is contemplated will in the near future be distributed per capita to the citizens of the Cherokee Nation
6 entitled to participate in the distribution of the common property of the Cherokee Tribe, after certain deductions for the expenses of the Cherokee schools and for other public purposes of the Cherokee Tribe are made therefrom, and if any person not entitled thereto be wrongfully and illegally admitted to participate in such distribution, the shares of your petitioners and of all other rightful owners of said sums will be proportionately and illegally diminished.

Eighth. That by the said act of Congress of July 1, 1902, above cited, provision is also made for the laying out, surveying, and platting of numerous townsites within the lands of the Cherokee Tribe above described, the number of which townsites your petitioners have no means of accurately determining, but your petitioners believe, and so believing, aver that there will be at least two hundred thereof. Provision is also made in said act for the appraisement and sale of the lots in such townsites and for the eventual distribution per capita of the proceeds of such sales to the citizens of the Cherokee Nation who are entitled to participate in the distribution thereof. Your petitioners have no means of determining or of ascertaining how much money will probably be realized by such sale, but they believe and so believing, aver that at least the sum of $2,000,000 will be realized by such sales, and on the distribution thereof your petitioners will be entitled to receive their pro rata shares of such proceeds, whatever the sum may be that is actually received as such; and if any persons not entitled thereto be wrongfully or illegally admitted to participate in such distribution, the shares that your petitioners should rightfully receive would be proportionately diminished.

Ninth. That beside and in addition to the property interests set forth and described in paragraphs fourth, fifth, sixth, seventh
7 and eight hereof, your petitioners are interested as part owners in common in other things of value consisting of choses in action, credits, demands and various sources of income claimed by and due to the Cherokee Nation, the value and descriptions of which your petitioners are unable here to set forth more specifically; but your petitioners' interests therein will be materially diminished if the persons claiming rights in the Cherokee Nation by intermarriage are recognized as having the right to share therein.

Tenth. That Tams Bixby, Thomas B. Needles, William A. Stanley and Clifton R. Breckenridge, composing what is known officially as "the Commission to the Five Civilized Tribes," and commonly called "the Dawes Commission," have been for some time, and are now engaged, under the direction of the Secretary of the Interior, in the preparation of a roll or of rolls of the citizens of the Cherokee Nation for the purpose of ascertaining the number and names of those persons living in the Cherokee Nation who are entitled to participate in the distribution of the common property and funds of said Nation, with a view to the allotment of the lands of the Cherokee

Tribe, above described, and the distribution per capita of the other common property of said tribe, especially the aforesaid fund of $2,719,288.90, now held in the Treasury of the United States, and such sum as shall be realized as the proceeds of the sale of lots in the town sites aforesaid; and certain persons who are not Cherokee Indians by blood nor otherwise members of the Cherokee Tribe of Indians, with any right in the property of said tribe, but who have intermarried with citizens of the Cherokee Nation by blood, Delawares, citizens of said Nation by adoption or nativity, and Shawnees, citizens of said Nation by adoption or nativity, have presented themselves before said Commission and claimed all the rights,
8 privileges and immunities of native Cherokees by reason of such intermarriages, and have demanded that they be enrolled as citizens of the Cherokee Nation and be recognized as having the right to participate in the distribution of the common property of the Cherokee Tribe, both land and money, which claim has just or reasonable foundation either in law or equity.

Eleventh. That said persons who claim rights in the Cherokee Nation by intermarriage are not entitled to participate in the distribution of the common property of the Cherokee Tribe of any kind or character or in the funds of the nation; and that, as the rolls of the Cherokee citizens, now being prepared by the aforesaid Commission to the Five Civilized Tribes, are for the sole purpose of determining the number and names of the persons in the Cherokee Nation who are entitled to participate in such distribution, which is now about to be made, they have no right to be enrolled on said rolls, and said Commission has no power or authority for so enrolling them.

Twelfth. That your petitioners are informed and believe, and so believing aver, that said persons base their claim to the right to be enrolled on the laws of the Cherokee Nation and the laws of Congress which they allege, as stated in the letter of the Secretary of the Interior set forth in paragraph third hereof, "recognize those persons who have been married to Cherokee citizens in accordance with the laws of the Cherokee Nation as full citizens of such Nation, entitled to share equally with full blooded citizens in the property of the tribe," all of which your petitioners deny. On the contrary, your petitioners are advised and believe, and so believing, allege and
9 declare that the Cherokee Nation never has, by any provision of treaty, agreement or act of its National Council, granted to any persons, who intermarry with citizens of the said Nation any rights whatever in the common property and funds of the Cherokee Tribe, but that by a provision contained in the laws of said Nation relating to "Intermarriage of White Men and Foreigners" that has always been and is now in force in said Nation it is specifically and expressly provided as follows:

"*Provided, also,* that the rights and privileges herein conferred shall not extend to right of soil or interest in the vested funds of this Nation."

Thirteenth. That your petitioners further deny that the laws of Congress recognize such intermarried persons "as full citizens of such Nation, entitled to share equally with full-blood citizens in the property of the tribe," and they aver that, on the contrary, said laws of Congress do not affirm or deny the right of any class of citizens of the Cherokee Nation to share in the property of the Cherokee tribe, except such rights as they would otherwise be entitled to under the laws of said Nation, and that as to the class of persons whose right to enrollment is involved in the above-entitled cause, said laws of Congress expressly declared the laws of the Cherokee Nation to be the criterion by which such right shall be ascertained. Your petitioners also deny that Congress has or had any power or authority to confer any right in the common property or the funds of the Cherokee tribe on any person or persons contrary to the laws of the Cherokee Nation.

Fourteenth. That your petitioners further allege that the said persons claiming rights in the Cherokee Nation by intermarriage have never been recognized by the Cherokee authorities as having any right to share in the property of the Cherokee tribe, nor have they been given any share of such property as has heretofore been distributed, except that in May, 1875, they were each given $10.55 "bread money," distributed by act of the National Council to the people of the Cherokee Nation to relieve their distress and preserve them from starvation, with which they were threatened by reason of the failure of crops caused by the continued drouths.

Fifteenth. Your petitioners allege and affirm that the uniform construction given to the laws of the Cherokee Nation relating to the intermarriage of white men and foreigners, by the council of the said Cherokee Nation and the other authorities thereof, who have in the course of their duties, been called on to construe the same, has been that persons who have by complying with said laws been privileged to reside in said Nation, acquired no rights thereby except such as were civil, political and personal, as subjects of the Cherokee Nation of Indians—without acquiring any right or title to the Cherokee domain, or to the proceeds thereof when made subject to a division among those to whom such domain had been conveyed, or to any funds of the Cherokee Tribe. As the construction of the laws of the Cherokee Nation by the authorities thereof, is binding on the courts and other authorities of the United States, and since the persons claiming rights in said Nation by intermarriage must depend entirely upon the laws of the Nation for the maintenance of such claim your petitioners allege that said persons are not entitled to be enrolled as claimed, and that the said Commission to the Five Civilized Tribes and the Secretary of the Interior ought not to so enroll them.

Prayers.

Wherefore your petitioners pray that this Honorable Court will report its findings and opinions to the Secretary of the Interior, as follows:

1. That the Cherokee Nation has never, by any treaty, agreement or act of its National Council, granted to the persons claiming rights in said Nation by intermarriage, any right, title or interest of any kind or character in or to any of the common property or funds of the Cherokee Tribe whatsoever; but that by the laws of said Nation such persons are expressly excluded therefrom.

2. That the authorities of the Cherokee Nation have never recognized any right in such persons to receive any part of such of the common property and funds of said tribe as has been heretofore distributed by said authorities among the citizens of said Nation, except $10.55 each, bread money distributed as charity in 1875.

3. That the laws of Congress recognize only such right in said persons as they claimed to under the laws of the Cherokee Nation, and no other.

4. That said persons could acquire no right of property in the Cherokee Nation without a grant of such right by the Nation lawfully given under its laws, and Congress has no power to secure to them any greater rights or privileges than those that have been so granted to them under the laws of said Nation.

5. That the courts and other authorities of the United States when construing the laws of the Cherokee Nation are bound by the interpretation thereof given by the proper authorities of said Nation, and must give force to such interpretation.

6. That said persons are not entitled to such enrollment as citizens of the Cherokee Nation as would recognize in them a right to any participation in the distribution of the common property and funds of the Cherokee Tribe of whatever kind or character.

7. Such other and further findings and opinions as in the wisdom of this Honorable Court your petitioners are entitled to have in the premises.

JNO. J. HEMPHILL,
Attorney of Cherokee Citizens by Blood.

CITY OF WASHINGTON, *District of Columbia, ss:*

Personally appeared before me, the undersigned Notary Public, John J. Hemphill, who being sworn deposes and says that he is the attorney for a large number of citizens of the Cherokee Nation by blood, including those whose names are set out in the above petition, that he is familiar with the allegations contained in the foregoing petition; and that the said allegations of the said petition are true to the best of his knowledge, information and belief.

——— ———.

Subscribed and sworn to before me this 8th day of April, 1903, at the City of Washington, District of Columbia.

EMORY H. BOGELEY.
[SEAL.] *Notary Public.*

13 Departmental No. 76.

IN THE MATTER OF THE ENROLLMENT OF PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE

vs.

UNITED STATES.

II.—*Answer of Certain Citizens of the Cherokee Nation Who Claim Citizenship by Intermarriage.*

Now come Francis B. Fite, W. E. Rowsey, J. O. Hall, W. E. Halsell, W. E. Hosey, William Little, D. M. Marrs, C. W. Turner, J. E. Campbell, Wm. Johnstone, William Jackson, and a large number of others, too numerous to mention, intermarried white persons, claiming to be entitled to citizenship in the Cherokee Nation, under the laws of said Nation, by their attorney, William T. Hutchings, and answering the petition herein, say:

First. That they admit the allegations of the first, second, fourth, fifth, sixth, seventh, eighth and ninth paragraphs of the petition.

Second. Answering the third paragraph of the petition, the defendants say that they admit that the letter contained in the petition from the Secretary of the Interior, dated February 24, 1903, is as set out in said paragraph.

Third. Answering the tenth paragraph of the petition, defendants say that it is true that the Commission to the Five Civilized Tribes is now engaged in the preparation of the rolls of citizens of the Cherokee Nation, but defendants deny that certain persons
14 who are not Cherokee Indians by blood, nor otherwise members of the Cherokee Tribe of Indians without any right in the property of the Tribe, but who have intermarried with citizens of the Cherokee Nation by blood, Delawares, citizens of said Nation by adoption or nativity, and Shawnees, citizens of said Nation by adoption or nativity, have presented themselves before said Commission and claimed all the rights, privileges and immunities of native Cherokees by reason of such intermarriage, and have demanded that they be enrolled as citizens of the Cherokee Nation and be recognized as having the right to participate in the distribution of the common property of the Cherokee Tribe, both land and money, which claim is not just nor has reasonable foundation either in law or equity.

Fourth. The defendants, answering the eleventh paragraph of the petition, deny that the persons who claim rights in the Cherokee Nation by intermarriage are not entitled to participate in the distribution of the common property of the Cherokee Tribe of any kind and character, or in the funds of the Nation; and allege that as to the rolls of the Cherokee citizens now being prepared who are entitled to participate in the distribution of said property and funds, they have a right to be enrolled on such roll, and that the Commis-

sion to the Five Civilized Tribes are authorized and empowered by law to so enroll them.

Fifth. Answering the twelfth paragraph of petitioners' complaint, the defendants admit that they base their claim to be enrolled as Cherokee citizens on the laws of the Cherokee Nation and on the laws of Congress set forth in said petition, and deny the al-egation of petitioners that the Cherokee Nation never has, by any provision, by treaty, agreement, or act of its National Council, granted to any persons who intermarried with citizens of the said Nation, any
15 rights whatever in the common property and funds of the Cherokee Nation.

Defendants further deny that the provision of law set forth in the said twelfth paragraph is now in force in said Nation, and allege that it was not in force at the time of the Act of Congress there set out and subsequently mentioned in said paragraph.

Sixth. Defendants, answering the thirteenth paragraph of the petition, assert that the laws of Congress simply confirmed the rights conferred upon citizens adopted into the Cherokee Nation by intermarriage, and placed such intermarried citizens on an equal footing with the citizens by blood of said Nation, which said laws have been in force with a short interim since the..... day of..... 1855.

Seventh. Defendants, answering the fourteenth and fifteenth paragraphs, say that it is not true, as alleged therein, that persons claiming rights in the Cherokee Nation by intermarriage have never been recognized by the Cherokee authorities as having any right to share in the property of the Cherokee Nation, except as therein mentioned in paragraph 14. They deny that the uniform construction given the laws in intermarriage of white men and foreigners by the Council and Courts of the Nation has been that such persons acquired only the right to reside in the Nation, and no other rights in the Nation, except such as are civil, political and personal as subjects of the Cherokee Nation, without acquiring any right or title to the Cherokee domain.

Eighth. Further answering, defendants allege that the persons who are citizens by intermarriage in the Cherokee Nation, have at all times owned and controlled farms and improvements the same as citizens by blood of the Cherokee Nation; that their lands and property have descended to their children under the laws of descent and distribution of the Cherokee Nation; that their estates have
16 been administered by the Cherokee Courts; that they have sued and been sued in the Courts of the Cherokee Nation; have been tried for criminal offences in such Nation, and have been acquitted, or convicted, and suffered the punishment as the result of the trials in such Courts warranted.

Ninth. Defendants further allege that the first Act regulating intermarriages with white people of the Cherokee Nation was enacted on the.....day of.....1855, and is as follows:

"AN ACT

"Regulating Intermarriages With White Men.

"Whereas, The peace and prosperity of the Cherokee people require that in the enforcement of the laws, jurisdiction should be exercised over all persons whatever, who may from time to time be privileged to reside within the territorial limits of this Nation; therefore,

"Be It Enacted by the National Council, That any 'unmarried' white man desiring to marry a Cherokee woman, shall be and is hereby required to obtain a license for the same from any of the Clerks of the District Courts of the several districts.

"Be It Further Enacted, That before any license as provided above shall be issued, the person applying shall be and is hereby required to pay to the clerk to whom application is made the sum of five dollars, and be also required to take the following oath: 'I do solemnly swear that I will honor, defend, and submit to the constitution and laws of the Cherokee Nation, and will neither claim nor seek from the United States government or its judicial tribunals any protection, privileges, or redress, incompatible with the same as guaranteed to the Cherokee Nation by the United States, in treaty stipulations entered into between them.

"Be It Further Enacted, That all white men applying for license, as provided in the first section of this act, shall, before ob-
17 taining the same, be required to present to the said clerk a certificate of good moral character, signed by at least seven respectable Cherokee citizens.

"Be It Further Enacted, That all judges of this Nation and every regular minister of all evengelical denominations having the care of souls, are hereby authorized and empowered to solemnize the rites of matrimony, according to the ceremonies usually observed and performed in such cases, under the provisions of this act.

"Be It Further Enacted, That no marriage between a citizen of the United States and a female citizen of this Nation, entered into within the limits of this Nation, except as hereinbefore authorized and provided, shall be legal; and any judge or minister who shall engage or assist in solemnizing any such marriage shall, upon conviction before any district court of this Nation, be fined one hundred dollars, and it shall be the duty of the solicitor of the district in which such judge or minister may reside to collect the same, who shall be entitled for his services to twenty per cent. of the amount collected, and who shall place the remainder in the hands of the National Treasurer for public benefit.

"Be It Further Enacted, That persons performing the marriage ceremony under the authority of a license, provided for above, shall be required to attach a certificate of marriage to the back of the license, which shall be returned. The holder of the license and certificate shall then place the same in the hands of the clerk of the District Court, whose duty it shall be to record the same in his office.

"*Be It Further Enacted,* That any white citizen of the Cherokee Nation by marriage, etc., who shall use the intercourse law or laws (as they are termed) in the prosecution of a Cherokee Indian, for any criminal offense committed within the limits of the Cherokee Nation, shall forfeit his right to citizenship to the same, and
18 be subject to be dealt with as other white intruders in the country, and shall be removed out of the Nation.

"*Be It Further Enacted,* That should any white man or woman become a citizen of the Cherokee Nation by marriage, and be left a widow or widower by the decease of the Cherokee wife or husband, such surviving widower or widow shall continue to enjoy Cherokee privileges, unless such white widow or widower shall marry a white man or woman (as the case may be); then, in that case, all of his or her right to Cherokee citizenship shall cease.

"*Be It Further Enacted,* That any white man who shall lawfully marry under the provisions of this act, and then, or afterwards, abandon his wife, shall not be entitled to any of the rights and privileges of a citizen of the Cherokee Nation, but shall be, and is hereby considered, and shall be removed as an intruder."

Defendants aver that the foregoing remained the law of the Cherokee Nation until the — day of —, when the following amendment was enacted amending the last paragraph of the foregoing law:

"SEC. 75. Every person who shall lawfully marry under the provisions of this act, and afterwards abandon his wife, shall thereby forfeit every right and privilege of citizenship of this Nation, and shall be considered, and removed from the Nation, as an intruder; *provided,* that every adopted citizen under the provisions of this act, shall have been a *bona fide* resident of the Nation for six months previous to his admission to the polls as a legal voter; and every such adopted citizen who shall be guilty of denying or resisting the jurisdiction of this Nation, or shall appeal to or claim that of any other government, shall be adjudged guilty of perjury, and be liable to all the pains and penalties prescribed in such cases; *provided, also,* that the rights and privileges herein conferred, shall not extend to right of soil
19 or interest in the vested funds of this Nation, unless such adopted citizens shall pay into the general fund of the National Treasury, a sum of money to be ascertained and fixed by the National Council equal to the *pro rata* share of each native Cherokee, in the lands and vested wealth of the Nation, estimated at five hundred dollars, and thereafter conform to the constitution of the Nation, and to the laws made or to be made in pursuance thereof, in which case he shall be deemed a Cherokee to all intent, and be entitled to the rights of all other Cherokees."

November 28th, 1878, the latter part of this section was repealed, that is all after the words "this Nation" and beginning with the word "unless." This section then stood that way until December 10, 1880, when it was amended and re-enacted to read as follows:

"SEC. 667. Every person who shall lawfully marry under the pro-

visions of this act, and afterwards abandon his wife, shall thereby forfeit every right and privilege of citizenship of this Nation."

And this has remained the law of the Cherokee Nation from that time until this day.

Defendants further allege that the provision set forth in paragraph twelve of the petition, which is as follows: "Provided, also, that the rights and privileges herein conferred shall not extend to rights of soil or interest in vested funds of this Nation," was the law of the Cherokee Nation, only from the 28th day of November, 1878, until December 10, 1880. The law as it has existed since that time and up to the 16th day of December, 1895, being found in the last compilation of the Cherokee laws, to-wit, the Edition of 1892, page 329, Article 16, Section- 659 to 669 inclusive, to which reference is here made.

Tenth. Your petitioners aver that on December 16, 1895, the following act was passed by the Council of the Cherokee Nation:

"COUNCIL BILL NO. 25.

"*An Act in Regard to Marriage of White Men and Foreigners.*

"*Be It Enacted by the National Council:* That from and after the passage of this Act, all non-citizens who may marry Cherokees by blood, Delawares or Shawnees by blood, citizens of the Cherokee Nation, shall acquire by such marriage no rights of property, lands or money belonging in common to the Cherokee people, or the Cherokee Nation, and Chapter XII, Article XVI, Sections 659 to 669, inclusive, pages 329 to 334 of the Compiled Laws of the Cherokee Nation, is hereby so amended as to conform to the provisions of this Act, and to vest no other than political rights in persons not of Cherokee, Delaware or Shawnee blood, who marry Cherokees by blood, or Delawares, or Shawnees, by blood, who are recognized citizens, and all laws or parts of laws conflicting herewith are hereby repealed."

"Passed the Council December 5th, 1895.

"JOHN W. SHARP,
Speaker of Council.

"JOHN R. LEACH,
Clerk of Council.

"Passed the Senate December 6th, 1895.

"SAMUEL SMITH,
President of Senate.

"BROWN HITCHCOCK,
Clerk of the Senate.

"Approved December 16th, 1895.

"S. H. MAYES,
Principal Chief, C. N."

Your petitioners aver that the said Act is a distinct legis-
21 lative construction of their rights and a recognition that all intermarried citizens who were married in accordance with the laws of the Cherokee Nation previously were entitled to share in the common property and funds of the Cherokee Nation the same as citizens by blood.

Eleventh: The defendants for further answer, say that by the Act of Congress of June 28, 1898, entitled, "An Act for the protection of the people of the Indian Territory, and for other purposes," (30 Stat., page 495) and by section 21 thereof, Congress confirmed the roll of Cherokee citizens of 1880, and directed the Commission to the Five Civilized Tribes to enroll all the citizens found living whose names were found on said roll "with such intermarried white persons as may be entitled to citizenship under the Cherokee laws."

Defendants further allege that by an Act of July 1, 1902 (32 Stat. 716-720) section 27, provided that the rolls of the Cherokee Nation should in all respects be made in strict compliance with the provisions of section 21 of the aforesaid Act of June 28, 1898, which said Act of Congress was duly ratified by the Cherokee people as provided in Section 75 thereof.

Defendants aver that the Cherokee Nation, in making said rolls of 1880, enrolled the intermarried white persons along with the citizens by blood, and that the confirmation of said roll gave to all intermarried citizens now living who had their names on such roll the same rights as Cherokee citizens by blood, and the further provision for enrolling all others intermarried since under the same laws under which they were intermarried placed the latter on the same footing and gives to them all alike the same rights to the common property and funds of the Cherokee Nation as citizens by blood.

Wherefore these defendants pray judgment that the peti-
22 tion be dismissed with their reasonable costs and expenses herein incurred.

WILLIAM T. HUTCHINGS,
Attorney for Respondents.

Muskogee, Indian Territory.

UNITED STATES OF AMERICA,
Indian Territory, Western District:

Personally appeared before me W. E. Rowsey, and being sworn, deposes and says:

That he is an intermarried citizen of the Cherokee Nation and one of the defendants herein mentioned among a large number of other citizens of the Cherokee Nation by intermarriage, including those whose names are set out in the above answer; and states that he is familiar with the allegations contained in the foregoing answer, and that the said allegations are true to the best of his knowledge and belief.

W. E. ROWSEY.

Subscribed and sworn to before me on this ninth day of June, 1903, at the town of Muskogee, Indian Territory.

CHAS. W. WESTERHEIDE,
Notary Public.

My commission expires June 3, 1907.

23 Departmental No. 76.

IN THE MATTER OF THE ENROLLMENT OF PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE
vs.
UNITED STATES.

III.—*Intervening Petition of the Cherokee Nation—Filed by leave of Court October 7, 1904.*

To the Honorable The Chief Justice and Associate Justices of the Court of Claims of the United States:

Comes the Cherokee Nation by its Principal Chief, William C. Rogers, represented by its attorney in fact, L. F. Parker, Jr., and asks leave to intervene in this cause and respectfully shows to this Court:

First: As the representative and having in its charge the
24 interests of the Cherokee people entitled to participate in the distribution of the estate belonging to them it is directly interested in this cause.

Second: The Cherokee Nation of Indians is and at all times has been a body politic and recognized as such by the United States.

Third: That under and by virtue of the provisions of certain acts of Congress and of the treaties between the United States and the Cherokee Nation of Indians, and the patent by the United States to the Cherokee Nation issued on the 31st day of December, 1838, as supplemented and interpreted by the treaty between the same parties on August 17th, 1846, the people of the Cherokee Nation of Indians became and are possessed and now own the lands embraced within the boundaries of the Cherokee Nation, Indian Territory, for the common use and benefit of themselves, their heirs and successors; and that each and every Cherokee has an equal interest therein.

Fourth: That said Cherokee Nation as a body politic possessed and under the provisions of the treaties aforesaid was guaranteed the right of local self government, with full authority to make and carry into effect all such laws as it might deem necessary for the government and protection of persons and property within its jurisdiction, belonging to its own people or such persons as might be associated or connected with them.

25 Fifth: In the exercise of this governmental power the people of the Cherokee Nation ordained and established a written constitution and system or code of laws.

Sixth: That prior to 1855, certain white persons had intermarried with Cherokees, and such marriages while recognized as binding, had given rise to serious questions respecting the status of such intermarried white persons and the jurisdiction of the Cherokee Nation over them.

Thereupon the Cherokee National Council, with the approval of the Principal Chief, passed the following Act:

"AN ACT

"Regulating Intermarriages with White Men.

"Whereas, The peace and prosperity of the Cherokee people require that in the enforcement of the laws, jurisdiction should be exercised over all persons whatever, who may from time to time be privileged to reside within the territorial limits of this Nation: Therefore,

"Be It Enacted by the National Council, That any 'unmarried' white man desiring to marry a Cherokee woman, shall be and is hereby required to obtain a license for the same from any of the clerks of the District Courts of the several districts.

"Be It Further Enacted, That before any license as provided above shall be issued, the person applying shall be and is hereby required to pay to the clerk to whom application is made the sum of five dollars, and be also required to take the following oath:

'I do solemnly swear that I will honor, defend and submit to the constitution and laws of the Cherokee Nation, and will neither claim nor seek from the United States government or its judicial tribunals and protection, privileges or redress, incompatible with the same as guaranteed to the Cherokee Nation by the United States, in treaty stipulations entered into between them.'

26 *"Be It Further Enacted,* That all white men applying for license, as provided in the first section of this act, shall before obtaining the same, be required to present to the said clerk a certificate of good moral character, signed by at least seven respectable Cherokee citizens.

"Be It Further Enacted, That all judges of this Nation, and every regular minister of all evangelical denominations having the care of souls, are hereby authorized and empowered to solemnize the rites of matrimony, according to the ceremonies usually observed and performed in such cases, under the provisions of this act.

"Be It Further Enacted, That no marriage between a citizen of the United States and a female citizen of this Nation, entered into within the limits of this Nation, except as hereinbefore authorized and provided, shall be legal: and any judge or minister who shall engage or assist in solemnizing any such marriage shall, upon conviction before any District Court of this Nation, be fined one hundred dollars, and it shall be the duty of the solicitor of the district in which such judge or minister may reside to collect the same, who shall be

entitled for his services to twenty per cent. of the amount collected, and who shall place the remainder in the hands of the National Treasurer for public benefit.

"*Be It Further Enacted*, That persons performing the marriage ceremony under the authority of a license, provided for above, shall be required to attach a certificate of marriage to the back of the license, which shall be returned. The holder of the license and certificate shall then place the same in the hands of the clerk of the District Court, whose duty it shall be to record the same in his office.

"*Be It Further Enacted*, That any white citizen of the Cherokee Nation by marriage, etc., who shall use the intercourse law or laws (as they are termed) in the prosecution of a Cherokee Indian, for any criminal offense committed within the limits of the Cherokee Nation, shall forfeit his right of citizenship to the same, and be subject to be dealt with as other white intruders in the country, and shall be removed out of this Nation.

27 "*Be It Further Enacted*, That should any white man or woman become a citizen of the Cherokee Nation by marriage, and be left a widow or widower by the deceased of the Cherokee wife or husband, such survivingg widower or widow shall continue to enjoy Cherokee privileges, unless such white widower or widow shall marry a white man or woman (as the case may be); then, in that case, all of his or her right to Cherokee citizenship shall cease.

"*Be It Further Enacted*. That any white man who shall lawfully marry under the provisions of this act, and then, or afterwards, abandon his wife, shall not be entitled to any of the rights and privileges of a citizen of the Cherokee Nation, but shall be and is hereby considered, and shall be removed as, an intruder." Oct. 15, 1855.

Seventh: In pursuance of this policy, and as one of the essentials of an effective government the Cherokee Nation continued to exercise political control over such persons, exacting allegiance of them as citizens of the body politic, subject to its government, and extending to them as a correlative civil, political and personal rights; which included the right to vote and participate in the affairs of the Nation, (with few exceptions), to reside within its limits, to trade, and use the public domain.

Eighth: The Cherokee National Council, with the approval of the Principal Chief, on December 5th, 1874, adopted a new code, the preparation of which had been theretofore duly authorized, and which contained among others the following act:

"ART XV.

"*Intermarriage of White Men and Foreigners.*

"SEC. 67. Whereas the peace and prosperity of the
28 Cherokee people require that, in the enforcement of the laws, jurisdiction should be exercised over all persons whatever, who may from time to time be privileged to reside within

the territorial limits of this Nation, therefore, every white man, or citizen of the United States, or of any foreign state or government, desiring to marry a Cherokee woman, a citizen of the Nation, shall be and is hereby required to obtain a license for the same from any of the district clerks of the several districts, and make oath or satisfactory showing to such clerk, that he has not a surviving wife from whom he has not been lawfully divorced. And, unless such information be freely furnished to the satisfaction of the clerk, no license shall issue.

"SEC. 68. Every white man or person applying for license, as provided in the preceding section of this act, shall, before obtaining the same, be required to present to the said clerk a certificate of good moral character, signed by at least ten (10) respectable Cherokee citizens by blood, who shall have been acquainted with him at least six months immediately preceding the signing of such certificate.

"SEC. 69. Before any license as herein provided shall be issued, the person applying shall be and is hereby required to pay to the clerk to whom application is made the sum of five dollars, and be also required to take the following oath:

'I do solemnly swear that I will honor, defend and submit to the constitution and laws of the Cherokee Nation, and will neither claim nor seek from the United States or any other government or from the judicial tribunals thereof, any protection, privilege or redress, incompatible with the same as guaranteed to the Cherokee Nation by the United States, in treaty stipulations entered into between them. So help me God.'

"SEC. 70. Marriages, contracted under the provisions of this act, shall be solemnized as provided by the laws of this Nation, or otherwise shall be null and void.

SEC. 71. No marriage between a citizen of the United States or any foreign nation and a female citizen of this Nation, en-
29 tered into within the limits of this Nation, except as hereinbefore authorized and provided, shall be legal; and any person who shall engage or assist in solemnizing any such marriage shall, upon conviction before any District Court of this Nation, be fined one hundred dollars, and it shall be the duty of the solicitor of the district in which such person may reside to collect the same; and such solicitor so collecting shall be entitled for his services to twenty-five per cent. of the amount collected, and shall place the remainder into the hands of the treasurer, to be by him credited to the general fund.

"SEC. 72. Every person performing the marriage ceremony under the authority of a license, provided herein, shall be required to attach a certificate of marriage to the back of the license, and return it to the person in whose behalf it was issued, who shall within thirty days therefrom place the same in the hands of the district clerk, whose duty it shall be to record the same and return it to the owner.

"SEC. 73. Every adopted citizen of the Cherokee Nation, by marriage or otherwise, who shall use the intercourse law or laws (as they

are termed) in the prosecution of a Cherokee Indian, for any crimi
nal offense committed within the limits of the Cherokee Nation
shall forfeit his rights of citizenship to the same, and be subject t
be dealt with as other intruders in the country, and shall be remove
out of this Nation.

SEC. 74. Should any man or woman, a citizen of the Unite
States or of any foreign country, become a citizen of the Cheroke
Nation by intermarriage, and be left a widow or widower by the de
cease of the Cherokee wife or husband, such surviving widow o
widower shall continue to enjoy the rights of citizenship, unless h
or she shall marry a white man or woman, or person (as the case ma
be), having no rights of Cherokee citizenship by blood; in that cas
all of his or her rights acquired under the provisions of this act shal
cease.

SEC. 75. Every person who shall lawfully marry unde
30 the provisions of this act, and afterwards abandon his wife
shall thereby forfeit every right and privilege of citizenshi
of this Nation, and shall be considered, and removed from the Natio
as an intruder; provided, that every adopted citizen under the pro
visions of this act, shall have been a "bona fide" resident of th
Nation for six months previous to his admission to the polls as a lega
voter; and every such adopted citizen who shall be guilty of denyin
or resisting the jurisdiction of this Nation, or shall appeal to or clai
that of any other government, shall be adjudged guilty of perjur
and be liable to all pains and penalties prescribed in such cases
provided, also, that the rights and privileges herein conferred, shal
not extend to right of soil or interest in the vested funds of this Na
tion, unless such adopted citizen shall pay into the general funds o
the national treasury a sum of money to be ascertained and fixed b
the National Council, equal to the "pro rata" share of each nativ
Cherokee, in the lands and vested wealth of the Nation, estimate
at five hundred dollars, and thereafter conform to the constitution o
the Nation, and to the laws made or to be made in pursuance thereof
in which case he shall be deemed a Cherokee to all intent, and b
entitled to all the rights of other Cherokees

"SEC. 76. Property of every description, possessed within th
limits of the Cherokee Nation, by an adopted citizen, shall, in cas
such adopted citizen abandon his wife without lawful cause, be th
absolute property of such wife, or wife and her children. But when
ever such abandonment shall be planned or effected by the wife, fo
the purpose of ridding herself of her husband, then and in that case
such wife shall be entitled to only such property as shall be awarded—
upon application of either party for divorce—by the court having
jurisdiction."

Ninth: That the National Council, with the approval of the Prin
cipal Chief on the 28th of November, 1877, passed the following act

"*Be It Enacted by the National Council*, That Chapter 13, Arti
cle 15, Section 75 of the New Code laws be, and the same i
31 hereby amended as to strike out of said Section in the las

proviso from the words 'this Nation,' where said words end the third line in said proviso of said Section 75."

So that said proviso after this amendment read as follows:

'provided, also, that the rights and privileges herein conferred, shall not extend to right of soil or interest in the vested funds of this Nation.'"

Tenth: That the National Council, with the approval of the Principal Chief, on the 11th day of December, 1880, passed the following acts:

Be It Enacted by the National Council, That Article 15, Sections 68 and 69 of the New Code of laws be amended so as to read: 'Ten respectable citizens of the Cherokee Nation who are Cherokees, Delawares or Shawnees by blood, be authorized to sign a certificate of moral character of any white man or foreigner desiring a license to marry a Cherokee, Delaware or Shawnee woman.'"

"Be It Further Enacted, That all citizens of the United States and foreigners obtaining a license to marry a Cherokee, Delaware or Shawnee woman under the provisions of Section 69, Article 15, New Code, be required to pay to the district clerk the additional sum of $5.00 to be turned over to the National Treasurer for the benefit of the Cherokee Nation on the first Monday in November of each year, beginning with 1881.

"Tahlequah, C. N., December 10, 1880."

Concurred in by the Senate with the following amendments:

Be It Further Enacted, That all United States citizens or foreigners desirous of marrying a Cherokee, Delaware or Shawnee woman citizen of this Nation, shall on application for marriage licenses present to the clerk of the district in which he is desirous of marrying, a certificate of good moral character, signed by the county clerk,
32 and sealed with the seal of the county of which he is a legal voter.

"Amendment concurred in by Council, December 11th, 1880.

"Approved, December 11th, 1880.

"D. A. BUSHYHEAD,
"Principal Chief of the Cherokee Nation."

Eleventh: That the Cherokee National Council, with the approval of the Principal Chief, on December 6th, 1890, passed the following Act:

An Act giving the circuit courts authority to declare the forfeiture of the rights of certain adopted citizens.

"Be It Enacted by the National Council, That the circuit courts shall have authority to hear and determine all cases that may be brought before it by the solicitors of the several districts, or other persons wherein it may be alleged that any citizen of the United States or other government, adopted by intermarriage under the laws of the Cherokee Nation, has forfeited the rights of citizenship, by

acts which declare such forfeiture. Proceedings in such cases shall be by citation if the party be resident in the Cherokee Nation, or by thirty days notice of such proceedings in the Cherokee Advocate and be conducted as are civil suits before such courts. On the finding of verdict by the jury against such person, it shall be the duty of the clerk of the court to notify the Principal Chief of such finding, and it shall be the duty of the Principal Chief to make known such finding to, and call on, the United States Indian Agent for the removal of such person beyond the limits of the Cherokee Nation. It shall not be lawful thereafter for any clerk to issue a marriage license, or permit to reside in the Cherokee Nation, in any capacity whatever, to any person so declared to have forfeited his rights to citizenship in the Cherokee Nation."

Twelfth: Said original act regulating the intermarriage of
33 white men as amended by these subsequent acts is as follows:

"SEC. 67. Whereas the peace and prosperity of the Cherokee people require that, in the enforcement of the laws, jurisdiction should be exercised over all persons whatever, who may from time to time be privileged to reside within the territorial limits of this Nation, therefore, every white man, or citizen of the United States, or of any foreign state or government, desiring to marry a Cherokee woman, a citizen of the Nation, shall be and is hereby required to obtain a license for the same from any of the district clerks of the several districts, and make oath or satisfactory showing to such clerk, that he has not a surviving wife from whom he has not been lawfully divorced. And, unless such information be freely furnished to the satisfaction of the clerk, no license shall issue.

"SEC. 68. Every white man or person applying for license, as provided in the preceding section of this act, shall, before obtaining the same, be required to present to the said clerk a certificate of good moral character, signed by at least ten (10) respectable Cherokee citizens by blood, who shall have been acquainted with him at least six months immediately preceding the signing of such certificate; provided, ten (10) respectable citizens of the Cherokee Nation who are Cherokees, Delawares and Shawnees by blood, be authorized to sign a certificate of moral character of any white man or foreigner desiring a license to marry a Cherokee, Delaware or Shawnee woman.

"SEC. 69. Before any license as herein provided shall be issued, the person applying shall be and is hereby required to pay to the clerk to whom application is made the sum of five dollars, and be also required to take the following oath:

'I do solemnly swear that I will honor, defend and submit to the constitution and laws of the Cherokee Nation, and will neither claim nor seek from the United States or any other government or from the judicial tribunals thereof, any protection, privilege or redress, incompatible with the same as guaranteed to the Cherokee
34 Nation by the United States, in treaty stipulations entered into between them. So help me God.'

"*Be It Further Enacted,* That all citizens of the United States

and foreigners showing a license to marry a Cherokee, Delaware or Shawnee woman be required to pay to the district clerk additional the sum of $5.00 to be turned over to the National Treasurer for the benefit of the Cherokee Nation on the first Monday in November of each year beginning with 1881.

"*Be It Further Enacted*, That all United States citizens or foreigners desirous of marrying a Cherokee, Delaware or Shawnee woman citizen of this Nation, shall, on application for marriage licenses present to the clerk of the district in which he is desirous of marrying a certificate of good moral character signed by the county clerk and sealed with the seal of the county of which he is a legal voter.

"SEC. 70. Marriages, contracted under the provisions of this act, shall be solemnized as provided by the laws of this Nation, or otherwise shall be null and void.

"SEC. 71. No marriage between a citizen of the United States or any foreign nation and a female citizen of this Nation, entered into within the limits of this Nation, except as hereinbefore authorized and provided, shall be legal; and any person who shall engage or assist in solemnizing any such marriage shall, upon conviction before any District Court of this Nation, be fined one hundred dollars, and it shall be the duty of the solicitor of the district in which such person may reside to collect the same; and such solicitor so collecting shall be entitled for his services to twenty-five per cent. of the amount collected, and shall place the remainder into the hands of the treasurer, to be by him credited to the general fund.

"SEC. 72. Every person performing the marriage ceremony under the authority of a license, provided herein, shall be required to attach a certificate of marriage to the back of the license, and return it to the person in whose behalf it was issued, who shall within thirty days therefrom place the same in the hands of the district clerk, whose duty it shall be to record the same and return it to the owner.

"SEC. 73. Every adopted citizen of the Cherokee Nation, by marriage or otherwise, who shall use the intercourse law or laws (as they are termed) in the prosecution of a Cherokee Indian, for any criminal offense committed within the limits of the Cherokee Nation, shall forfeit his rights of citizenship to the same, and be subject to be dealt with as other intruders in the country, and shall be removed out of this Nation.

SEC. 74. Should any man or woman, a citizen of the United States or of any foreign country, become a citizen of the Cherokee Nation by intermarriage, and be left a widow or widower by the decease of the Cherokee wife or husband, such surviving widow or widower shall continue to enjoy the right of citizenship, unless he or she shall marry a white man or woman, or person (as the case may be), having no rights of Cherokee citizenship by blood; in that case all of his or her rights acquired under the provisions of this act shall cease.

SEC. 75. Every person who shall lawfully marry under the pro-

visions of this act, and afterwards abandon his wife, shall thereby forfeit every right and privilege of citizenship of this Nation, and shall be considered, and removed from the Nation as an intruder; provided, that every adopted citizen under the provisions of this act, shall have been a "bona fide" resident of the Nation for six months previous to his admission to the polls as a legal voter; and every such adopted citizen who shall be guilty of denying or resisting the jurisdiction of this Nation, or shall appeal to or claim that of any other government, shall be adjudged guilty of perjury and be liable to all pains and penalties prescribed in such cases; provided, also, that the rights and privileges herein conferred, shall not extend to right of soil or interest in the vested funds of this Nation.

"SEC. 76. Property of every description, possessed within the limits of the Cherokee Nation, by an adopted citizen, shall, in case such adopted citizen abandon his wife without lawful cause, be the absolute property of such wife, or wife and her children. But
36 whenever such abandonment shall be planned or effected by the wife, for the purpose of ridding herself of her husband, then and in that case, such wife shall be entitled to only such property as shall be awarded—upon application of either party for divorce—by the court having jurisdiction.

"*Be It Enacted by the National Council,* That the circuit courts shall have authority to hear and determine all cases that may be brought before it by the solicitors of the several districts, or other persons wherein it may be alleged that any citizen of the United States or other government, adopted by intermarriage under the laws of the Cherokee Nation, has forfeited the rights of citizenship, by acts which declare such forfeiture. Proceedings in such cases shall be by citation if the party be resident in the Cherokee Nation, or by thirty days' notice of such proceedings in the Cherokee Advocate and be conducted as are civil suits before such courts. On the finding of verdict by the jury against such person, it shall be the duty of the clerk of the court to notify the Principal Chief of such finding, and it shall be the duty of the Principal Chief to make known such finding to, and call on, the United States Indian Agent for the removal of such person beyond the limits of the Cherokee Nation. It shall not be lawful thereafter for any clerk to issue a marriage license, or permit to reside in the Cherokee Nation, in any capacity whatever, to any person so declared to have forfeited his rights to citizenship in the Cherokee Nation."

Thirteenth: Intervener further alleges that said act as last above set out was in force on said 11th day of December, 1880, and has at all times since that date been the law of the Cherokee Nation upon the subject of intermarriage of white persons therein, and is in force in that Nation to this day.

Fourteenth: The intervener further alleges that during the time the act as contained in the new code of 1875 was in force,
37 and until the same was further amended on the 28th day of November, 1877, but two intermarried white persons availed

themselves of the offer therein made, by which persons of that class might acquire by purchase, a right in the common property of the Cherokee people the same as native born Cherokees, and that neither of said citizens are parties to this suit, nor are their rights involved or affected hereby; and that no party to this suit or persons whose rights are affected hereby has ever purchased any right in the lands or funds of the Cherokee people nor have they ever paid or offered to pay any consideration therefor.

Fifteenth: The Intervener further alleges that on the 19th day of July, 1866, a treaty was entered into between the United States and the Cherokee Nation of Indians containing among other provisions the following:

"Art. 15. The United States may settle any civilized Indians friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96 degrees on such terms as may be agreed upon by such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz:

"Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever remain a part of the Cherokee Nation, on equal terms in every respect with native citizens.

38 "And should any such tribe, thus settling in said country, decide to preserve their tribal organizations, and to maintain their *their* tribal laws, customs and usages, not inconsistent with the constitution and laws of the Cherokee Nation, they shall have a district of country set off for their use by metes and bounds equal to one hundred and sixty acres, if they should so decide, for each man, woman and child of said tribe, and shall pay for the same into the national fund such price as may be agreed on by them and the Cherokee Nation subject to the approval of the President of the United States, and in cases of disagreement the price to be fixed by the President.

"And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country, and thence afterwards they shall enjoy all the rights of native Cherokees. * * *"

Sixteenth: The Intervener further alleges in pursuance of said treaty on the 8th day of April, 1867, articles of agreement were made between the Cherokee Nation of Indians, and the Delaware tribe of Indians, which contained among others the following provisions:

"Whereas by the fifteenth article of a certain treaty between the United States and the Cherokee Nation, ratified August 11th, 1866, * * *

"Now therefore, it is agreed between the parties hereto, subject to the approval of the President of the United States, as follows:

The Cherokee parties of the first part, for and in consideration of certain payments and the fulfillment of certain conditions hereinafter mentioned agree to sell to the Delawares for their occupancy a quantity of land * * nor shall the continued ownership and occupancy of said land by any Delaware so registered be in-
39 terfered with in any manner whatever without his consent, but shall be subject to the same conditions and restrictions as are by the laws of the Cherokee Nation imposed upon the native citizens thereof. * * * "

"On the fulfillment of the Delawares of the foregoing stipulations all the members of the tribe registered as above provided shall become members of the Cherokee Nation with the same rights and immunities, and the same participation (and no other) in the national funds as native Cherokees, save as hereinbefore provided. And the children born of such Delawares so incorporated into the Cherokee Nation, shall in all respects be regarded as native Cherokees."

Seventeenth: The Intervener further alleges that on the 7th day of June, 1869, articles of agreement were entered into between the Cherokee Indians and the Shawnee tribe of Indians, which among other provisions contained the following:

"* * Whereas it is provided by the 15th Article of the treaty between the United States and the Cherokee Indians concluded July 19th, 1866, that the United States may settle any civilized Indians. * *"

"And it is further agreed by the parties hereto that in consideration of the said payments and acts agreed upon as hereinbefore stated, that the said Cherokee Nation will receive the said Shawnees * * into the country of the said Cherokees upon unoccupied lands east of 96 degrees, and that the said Shawnees shall be incorporated into and ever after remain a part of the Cherokee Nation on equal terms in every respect and with all the privileges and immunities of the native Cherokees of said Cherokee Nation; * *"

Eighteenth: That the National Council in the exercise of its power to construe treaty stipulations on the 27th day of April, 1886, passed the following act:

40 *"Construction of the rights of Cherokee citizenship as designed to be conferred upon freedmen and civilized Indians by the 9th and 15th articles of the treaty of 1866.*

"Whereas, Section 20 of the Article of the Cherokee Constitution vests the sole power of the construing treaty stipulations in the National Council, acting in behalf of this Nation as one of the parties to any treaty, and

"Whereas, pursuant *of* this 'power' the National Council did on the 20th day of November, 1866, construe certain provisions of the treaty of 1866, relating to free colored persons and freedmen formerly slaves of Cherokee citizens, and contained in the 9th article of said treaty as well as relating to civilized Indians who might be settled east of 96 degrees, of west longitude, according to Article 15th of said treaty, declaring such colored persons, freedmen and friendly Indians citizens of this Nation the same as native Cherokee residents and adopted whites, but omitted to define and construe what rights and privileges did attach to such citizenship as then understood and intended to be conferred and vested; and what rights were reserved by the Nation making such grant; therefore,

"*Be It Enacted by the National Council,* That the phrase 'All the rights of native Cherokees,' as used in the 9th and 15th Articles of the treaty of July 19th, 1866, between the United States and this Nation, is hereby construed to mean the individual rights, privileges and benefits enjoyed by white adopted citizens of this Nation, before and at the making of said treaty, and who have been by law admitted to 'All the rights of the native Cherokees'—civil, political and personal, as subjects of the Cherokee Nation of Indians—without acquiring any right or title to the Cherokee domain, or to the proceeds thereof when made subject to a division among those to whom such domain had been conveyed—all the right to the land then held and owned by this Nation, and to the principal of the proceeds thereof when realized, being reserved by and to the original Cherokee owners,

as in the case of adopted white citizens, as aforesaid, subject
41 to be conveyed or granted only at the option of said owners,

or for value received according to the agreements provided to be made with friendly Indians in conformity with the 15th Article of said treaty.

"*Bt It Further Construed and Declared,* That agreeably to such understanding of the 15th Article of said treaty, the value of the lands west of the Arkansas river having not been computed when ascertaining the just proportion of money to be paid by the Delawares and Shawnees when admitted citizens of this Nation—said tribes were when adopted and are now entitled to the above defined civil, political and personal rights of individual citizens as subjects of this government, with such right to the national domain and funds as were by them or either of them paid for as per agreement made in conformity with said 15th Article; and that any just title to Cherokee land west of 96 degrees or to the principal to any of the proceeds thereof, was not by them purchased, nor has been acquired by them since.

"*Be It Further Construed and Declared,* That in pursuance of the aforesaid understanding of this Nation, the free colored persons and freedmen, described in the 9th Article of said treaty, were admitted to, and are now entitled to, those rights of 'Native Cherokees' as had been and were, when the said treaty was made, previously held and enjoyed by native Cherokees and adopted whites who had been given all the rights of native Cherokees as citizens of this government, yet

had been excluded from per capita of money realized by this Nation from the sale of land; the said colored persons and freedmen did not acquire by the use of the phrase, 'All the rights of native Cherokees,' an individual or other title to the Cherokee domain or any part of the same other than the use thereof in common with all other citizens, nor to the benefit of the proceeds thereof except such benefit as was or might be provided to be conferred by investments of such proceeds and expenditures of the interest by the Cherokee Government for the benefit of all citizens alike."

Nineteenth: The National Council without the approval
42 of the Principal Chief on the 19th of May, 1883, passed the following act:

"*An act providing for the payment of the balance due on lands west of 96 degrees per capita.*

"*Be It Enacted by the National Council,* That when the additional amount appropriated by act of Congress of March 3rd, 1883, shall have been received by the treasurer of the Cherokee Nation the Principal Chief shall cause the same to be paid out 'per capita' to the citizens of the Cherokee Nation by Cherokee blood.

"*Be It Further Enacted,* That for the purpose of carrying out the provisions of this Act the Principal Chief shall at his earliest convenience appoint two competent persons in each district to make correct census roll of the persons entitled and turn over the same certified to by him to the treasurer of the Cherokee Nation who shall file the same in the office.

"*Be It Further Enacted,* That the persons appointed by the Principal Chief to take the census shall each be entitled to ($3.00) three dollars a day while in actual service.

"*Be It Further Enacted,* That as soon as advised by the proper authority that the funds are ready it shall be the duty of the treasurer to make requisition for the same and on receiving said funds it shall be his duty to pay the same out per capita to citizens of the Cherokee Nation by blood according to the census rolls. In making said payments the treasurer is hereby directed to pay the funds in person to all adult persons entitled to the same, and to parents, guardians and heads of families representing minors and disabled persons, and to no other person or persons whomever: It shall be the duty of the treasurer to keep a receipt roll of the payments made, and to whom, and which shall be reported to the National Council next following said payment.

"*Be It Further Enacted,* That the sum of three hundred dollars or so much thereof as may be necessary to defray the expenses of taking the census and preparing the proper rolls, is hereby appropriated out of the funds to be received for this purpose.

43 "*Be It Further Enacted,* That the Treasurer shall make the payment at Tahlequah, Vinita, Fort Gibson and Webers Falls.

Twentieth: That the National Council with the approval of the Principal Chief on April 28th, 1886, passed the following Act:

"Whereas, by an act of the National Council approved May 19th, 1883, it was provided that the treasurer, whenever payments are made to him, by said Cherokee Strip Live Stock Association, is hereby requested to retain in the treasury until the same shall amount to $300,000.00 and to pay the same out per capita under the direction of the National Council, and

"Whereas, said amount above specified is now on hand in the treasury, the act provides that it shall be paid out to the citizens of the Cherokee Nation by blood."

And the National Council, with the approval of the Principal Chief, on November 26th, 1890, provided for the distribution of proceeds from leases of lands in the Cherokee Outlet to Cherokees by blood only.

Twenty-first: That the National Council, with the approval of the Principal Chief, passed among others the following acts:

"*Be It Enacted by the National Council,* That A. G. Greenway, a white man, and his two children, Alonzo and Minnie Greenway, be and they are hereby re-admitted into the rights and privileges of citizens of the Cherokee Nation, provided: That the same rights and no other attach to A. G. Greenway than as an adopted citizen and (white) man in the Cherokee Nation.

"Approved November 29th, 1878."

"*Be It Enacted by the National Council,* That David N. Allen, Mary Allen and Joe Allen be and are hereby re-admitted
44 to all the rights and privileges of Cherokee citizens."

Concurred in by Council with following amendment:

"Provided, that David N. Allen, the petitioner, shall not acquire any rights except such as attach to white men, adopted citizens of (the) Cherokee Nation.

"Approved December 3rd, 1878."

"*A bill correcting error in census roll in case of W. D. Clingan.*

"*Be It Enacted by the National Council,* That the Principal Chief be, and he is hereby authorized to have corrected the error in the registration of the name of W. D. Clingan on the authenticated census roll of Cherokee citizens 1880-1. (Said W. D. Clingan being registered on said roll for Cooweescoowee district as an adopted white citizen, whereas the said W. D. Clingan is a well-known and entitled Cherokee citizen by blood and descent, and to be so registered as he has been before and since the year 1880, and the Principal Chief is authorized and directed to make the correction accordingly."

"*Senate Bill No.* 1.

"*Be It Enacted by the National Council,* That Louisa Schoose, formerly Louisa Woodal, together with her children, Lee, Nimrod

and Harry Schoose, be and are hereby admitted to all the rights of native born Cherokees in this Nation.

"*Be It Further Enacted,* That Schoose, husband of Louisa, be and is hereby admitted to citizenship the same as other adopted citizens of this Nation, rights, benefits, etc., such as the law gives adopted citizens, provided said Schoose complies with the law regulating intermarriages with white men.

"November 5th, 1884."

Concurred in by Council with following amendment:

"Insert "readmitted' instead of 'admitted' in line 6."

"November 6th, 1884.

"Amendment concurred in by Senate November 6th, 1884."

45 Twenty-second: The Intervener alleges that by virtue of the legislation hereinbefore recited, and by the laws and customs of the Cherokee Nation, there has been at all times and is now two distinct classes of citizenship in the Cherokee Nation. The one a political citizenship—as a member of the body politic—and the possession of which gave to its members civil, political and personal rights, that is to say, permission to reside and trade therein and participate in the affairs of the Nation, but without any interest in the common property or funds of the tribe. The other, a citizenship or membership in the tribe derived either through Cherokee blood (including a residence within the Nation), or by having acquired an interest in common with native Cherokees in their common property and funds by purchase, or by express grant; and that by the treaties, laws and customs of the Cherokee people, the actions of the National Council and the decisions of the courts for more than eighty years, this distinction has been recognized and enforced.

Twenty-third: The Intervener further alleges that the only persons entitled to the class of citizenship carrying with it an interest in the common property and funds of the Cherokee people were those who had derived such interest by inheritance, by purchase, or by express grant. That white persons, defendants herein, who have intermarried with Cherokees or other Indians who have ac-

46 quired the same rights, have never become entitled to any right or interest in the common property or funds of the Cherokee people either by inheritance, by purchase or by grant. And by the universal customs, treaties and laws of the Cherokee people as construed by the councils and courts, such intermarried white persons acquired by intermarriage only such rights as empower them to participate in the affairs of said Nation, as citizens thereof, that is to say, civil, political and personal rights therein; and according to said treaties laws, universal customs and decisions said white persons who have intermarried with Cherokees have acquired no interest in the common property or funds of the Cherokee people.

Twenty-fourth: The Intervener further states that from time to time funds have accumulated in the treasury of the United States and of the Cherokee Nation belonging to the Cherokee people, dis-

tributions from which funds have been made heretofore by the Cherokee Nation among those entitled thereto.

That for a period of more than forty years, particularly since the passage of the act of 1855, there have been a number of white persons resident in the Cherokee Nation who have intermarried with Cherokees, and that no such intermarried white persons, except those who have acquired such rights by purchase, have ever asserted a claim or set up any right whatever to any share in the com-
47 mon property of the Cherokee people, or to any share in the funds belonging to the Cherokee people, distribution of which has been made, as aforesaid; but on the contrary whenever payments have been made of funds which were the common property of the Cherokee people, such payments have universally been made to those citizens who were either Cherokees by blood, or who had acquired interests the same as native Cherokees in the common property or funds by purchase or express grant; and that the said intermarried white persons have participated in such payments and have received moneys growing out of such payments for and on behalf of different members of their families, who were entitled to the same by reason of their Cherokee blood, by purchase or express grant, without asserting or claiming any right in themselves to said funds or any portion thereof.

Twenty-fifth: The Intervener further alleges the law of the Cherokee Nation permitting suit to be brought against said Nation, which has been in force at all times since the adoption of the new code, November 1st, 1875, is as follows:

"The Cherokee Nation shall be liable to all persons whatever citizens of the Nation, having claims at law or equity, against her to the same extent as individual persons are liable to each other, and may be sued by any citizen, having a cause of action, in the manner hereinafter provided; but no suit shall be maintained unless the claim has been demanded, and payment refused or waived.

"All suits against the Nation shall be commenced in the
48 circuit court of the district in which the national capital is situated; but appeals may be taken to the supreme court in said circuit and supreme courts shall have exclusive jurisdiction over the same manner as in civil cases between individual litigants, and all cases in which the Nation may be made a party defendant; provided, however, that said suits may with the consent of the parties originate in and be determined by the supreme court alone independent of the circuit court. Suits against the Nation shall be instituted and conducted in the same manner as suits between individuals.

"Process in suits against the Nation shall be served on the Principal Chief, in the mode prescribed by law for the service of process in other cases; and the Principal Chief shall, whenever such process against the Nation is served upon him, appear in person or by counsel, and represent the Nation. He shall employ counsel as he may deem necessary to appear in defense of the Nation.

"Judgments and decrees against the Nation shall not be enforced

in any manner, except by an appropriation made by the National Council, or the petition of the person holding such judgment or decree, accompanied by a duly certified copy of such judgment or decree."

That no action at law or suit in equity was ever brought against the Cherokee Nation by or on behalf of any intermarried white person asserting any claim to a distributive share or interest in said funds or any part thereof.

Twenty-sixth: The Intervener further states that when in the treaties and laws the word "citizen" is used, the question as to what class of citizens is referred to is, as in other statutes and treaties controlled by the context, that is to say, by the connection in which said word is used. Where the word "citizen" is used in
49 treaties or legislation having reference to political or governmental affairs, such word has always been construed to mean and include all persons who are and were citizens of the body politic participating in its affairs and subject to its control; and where the word "citizen" has been used in legislation or treaties affecting the vested estate and funds of the Cherokees such term has always been construed as apply- only to that class of citizens which has an interest in the common property of the Cherokee people.

Twenty-seventh: The Intervener further alleges that the construction of the laws hereinbefore set out, namely, that white persons who have intermarried with Cherokees or other Indians who have acquired the same rights, are not entitled to participate in the common property of the Nation has been approved and acquiesced in not only by the Cherokee Nation, by the people of the Nation, by the said white intermarried citizens themselves, but also been repeatedly and continuously recognized by the Department of the United States Government having in charge the affairs of the Indians.

Twenty-eighth: The Intervener further alleges that the sole aim and intent of the legislation of Congress respecting this subject, has been to allot this estate among the Indians to whom it belonged; that the United States through such legislation or otherwise has never intended or attempted to create, add to, change, modify or in
50 any way affect the rights of the persons interested in said estate; but on the contrary the whole course and purpose of legislation has been to provide a means by which the *the* property might be partitioned among those actually entitled thereto. The acts of Congress of July 28th, 1898, and of July 1st, 1902, when understood and properly construed evince no other purpose or intent, and did not attempt or intend to create new interests or rights of property, or affect those already vested.

Twenty-ninth: The Intervener further alleges the roll of 1880 referred to in the act of Congress of June 28th, 1898, was not intended to be, nor was it a roll of citizens who were entitled to participate in the distribution of the lands and moneys of the tribe, but was a census of the Cherokee Nation taken in obedience to the constitution of said Nation to ascertain and fix the basis of representation in

the National Council. The second and fourth sections of the act are as follows:

"An Act for taking a census of the Cherokee Nation for the year 1880.

SEC. 1. *Be It Enacted by the National Council,* * * *

"SEC. 2. That it shall be the duty of the said census takers to take a full and complete returns of all persons found residing or sojourning within the limits of the respective districts, at the time of making the enumeration, as required by the foregoing section. And said returns shall show the names of all heads of families, giving a complete registration of births, deaths and marriages; also the age and sex; the names of all males above the age of eighteen
51 years; the names of all females above the age of eighteen; the names of all males under the age of eighteen years; the name of all females under the age of eighteen years, the names, sex and ages of all orphans under sixteen years; the names of all whites entitled by law, to citizenship, within the ages above specified; the names of all whites not so entitled; the names of all colored persons entitled by law to citizenship, within said ages, and the names of all such persons not so entitled; and the names of all Indians not so entitled, also a report of the chief production of agriculture, including number of horses, cattle, hogs, sheep, etc., during the year ending May first, 1880. * *

"SEC. 4. That it shall be the duty of the Principal Chief to cause a summary of the returns of said census to be prepared and laid before the National Council, together with the full returns of the same, at the beginning of the annual session thereof in 1880. And which returns shall serve as a basis for the representation of the several districts of the Cherokee Nation, in the National Council in accordance with the amendment to the constitution dated November 21, 1866. * * *"

The first and second sections of the act adopting said census roll are as follows:

"SEC. 1. *Be It Enacted by the National Council,* That the register or schedule of citizens of the Cherokee Nation, submitted to the Principal Chief by the census takers of the year 1880 under requirement of the act providing for taking the census of the Cherokee Nation,—as the said register or "schedule" has been examined, revised and amended by the committees of the present National Council, duly appointed for the purpose, and by them submitted to, and accepted by the Council, is hereby approved as a true and correct list of persons acknowledged and recognized to be citizens of the Cherokee Nation, at and within the time the said census was authorized to be taken.

"SEC. 2. *Be It Further Enacted,* That there shall be made in fair and legible hand writing, and under the supervision of the Principal Chief, as a neat and complete alphabetical transcript, or copy of all

names of citizens and non-citizens, to be found in the census
52 returns, revised and amended as before mentioned, with such discriptive matters and things as are attached to each name. * * "

That as incidental to and as a part of a proper census this roll contained discriptive matters and things disclosing how each person became and was a member of the body politic—the Cherokee Nation—and that said discriptive matters and things appended to each name thereon when taken in connection with the laws and customs of the Cherokee people determined to which of the classes of citizens, hereinbefore referred to, each belonged; that is to say, whether they were Cherokees by blood, Delawares or Shawnees who had rights in the common property and funds of the tribe as well as political rights in the Nation; as to the other persons whose names appeared upon said roll, such discriptive matters and things attached to their names when considered in connection with the laws and customs of the Cherokee people, disclosed that such other persons were merely citizens and members of th body politic with certain political rights as herein alleged, and that such other persons were not citizens possessing the rights of native Cherokees, and that such other persons did not have and were not entitled to have, any interest in the common property or funds.

That the adoption and confirmation of said roll of 1880 by the acts of Congress referred to was not merely an adoption of the list
53 of names shown thereon, but was also the adoption of the discriptive matter and things herein referred to.

That said act of Congress of June 28th, 1898, when properly construed does not require the enrollment by the Commission of any person whose name appears upon said roll of 1880, where the descriptive matters and things appearing thereon showed that such person was not entitled to any part of the common property and funds of the Cherokee people; that it was not intended by said acts of Congress of June 28th, 1898, and of July 1st, 1902, to confer upon the persons whose names appeared upon said roll of 1880 any other or greater rights than the roll itself showed they were entitled to, and that said acts of Congress when properly construed neither required nor permitted said Commission to enroll any person as entitled to share in the common property and funds of the Cherokee people, where it appeared by the descriptive matters and things upon said roll of 1880 that such person was not a native Cherokee, or a person who had acquired the full rights of a native Cherokee by purchase or express grant; and that as to all persons whose names did not appear upon said roll of 1880, said Commission was not required nor permitted to enroll any person as entitled to participate in the allotment of the common property of the Cherokee people who was not either a native Cherokee, or one who had acquired the rights of a native Cherokee by purchase or express grant.

54 That if said Acts of Congress or either of them are construed to authorize said Commission to place upon the roll

of allotment, the names of persons who were not entitled to any interest in the common property and funds of the Cherokee people, such Acts of Congress would operate to deprive the Cherokee people of their property without due process of law, in violation of Article Five Amendments to the Constitution of the United States, and hence in so far as the same sought to confer upon persons not entitled thereto any rights in the common property and funds of the Cherokee people they are unconstitutional and void.

Thirtieth: The Intervener further alleges that neither the Cherokee national government, the Cherokee Indians, or the United States, conjunctively or severally, either between themselves, or by any agreement for or with the intermarried white persons, or otherwise, has granted to or recognized in such persons any right or interest in the lands or moneys belonging to the Cherokee people.

Thirty-first: The Intervener further alleges that the United States, neither by treaty or act of Congress has ever provided for or recognized any right in any intermarried white person in the Cherokee Nation to share in the lands and moneys belonging to the Cherokee people, nor has any attempt been made by the United States to vest such persons with an interest therein, and if attempted it would have been in violation of the rights of said Cherokee people, con-
55 trary to Article Five Amendments to the Constitution of the United States, null and void.

Thirty-second: The Intervener further alleges that the Cherokee National Council has never by any act declared the right in any intermarried white person to share in the common property and funds of the Cherokee people, nor has any attempt been made by said National Council to vest such persons with an interest therein, and had such attempt been made it was unauthorized by the constitution of the Cherokee Nation; or by the people, in violation of their rights, wholly null and void.

PRAYERS.

Wherefore the Intervener prays that this Honorable Court will report its findings and opinions to the Secretary of the Interior as follows:

1. That the lands within the boundaries of the Cherokee Nation, and the funds to the credit of or that may be due that tribe, belong to the Cherokee people.

2. That, under the laws, usages and customs of the Cherokee people, persons not of Cherokee blood have become entitled to the rights of native Cherokees in the common property and funds belonging to the Cherokee people, by purchase, or by express grant, and not otherwise.

3. That white persons intermarried with native Cherokees or others who have acquired the same rights, have never become
56 entitled to any interest in the common property or funds of the Cherokee people by purchase.

4. That the Cherokee people have never by treaty, agreement or otherwise granted to intermarried white persons any right, title or interest in or to their common property or funds.

5. That white persons marrying Cherokees or others who had acquired the same rights, did not by the act of marriage become entitled to a pro rata share, equal with native Cherokees, in the common property and funds of the Cherokee people; but only acquired, by complying with the Cherokee laws respecting intermarriage, civil, political and personal rights in the Cherokee Nation, as a body politic.

6. That the laws of Congress recognize in intermarried white persons those rights and none other to which they are entitled under the laws, usages and customs of the Cherokee people.

7. That these intermarried whites, whose sole claim is based upon an intermarriage with Cherokees by blood or other Indians who have acquired the rights of native Cherokees, are not entitled to be enrolled as having a right to participate in the distribution of the common property and funds of the Cherokee people.

If this Honorable Court shall be of the opinion that the title to this property is in the Cherokee Nation, as such, then the In-
57 tervener respectfully prays the Court to report the following findings:

1. That under the laws, usages and customs of the Cherokee Nation, persons not of Cherokee blood have acquired the rights of native Cherokees in the common property and funds belonging to the Cherokee Nation, by purchase, or by express grant, and not otherwise.

2. That but two intermarried white persons have ever acquired the rights of native Cherokees in the common property and funds of the Cherokee Nation by purchase; and that none of the persons parties to this action, nor others for whom they appear, have ever acquired such interest or any interest therein by purchase.

3. That the Cherokee Nation has never by treaty, agreement or otherwise granted to intermarried white persons any right, title or interest in the common property or funds of the Cherokee Nation, with the two exceptions mentioned.

4. That said white persons marrying Cherokees or others who have acquired the same rights, did not by the act of marriage become entitled to a pro rata share, equal with native Cherokees, in the common property and funds of the Cherokee Nation; but only acquired, by complying with the Cherokee laws respecting intermarriage, civil, political and personal rights in the body politic.

5. That these intermarried whites whose sole claim is
58 based upon an intermarriage with Cherokees, or other Indians who have acquired the rights of native Cherokees, are not entitled to be enrolled as having a right to participate in the distribution of the common property and funds of the Cherokee Nation.

7. Such other and further findings and opinions as in the judgment of this Honorable Court may be just and proper in the premises.

L. F. PARKER, JR.,
Attorney in Fact for the Cherokee Nation.

STATE OF MISSOURI, *City of St. Louis:*

Personally appeared before me William C. Rogers, who being first duly sworn deposes and says:

That he is the duly elected, qualified and acting Principal Chief of the Cherokee Nation; that he has read the foregoing petition, knows the contents thereof and that the allegations therein contained are true to the best of his knowledge and belief.

WILLIAM C. ROGERS.

Subscribed and sworn to before me this 30th day of September, A. D. 1904, at the city of St. Louis, Missouri.

[SEAL.] RICHARD T. BOOTH,
Notary Public.

59 IV.—*Argument and Submission of Case.*

This cause, coming on to be heard upon the petition, answers, agreed facts and proofs, was argued by the attorneys of the respective parties on the 18th and 19th days of January, 1905, and submitted.

60 IN THE MATTER OF ENROLLMENT OF PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE.
v.
THE UNITED STATES.

V.—*Opinion of the Court. Filed May* 15, 1905.

NOTT, Ch. J., delivered the opinion of the court:

The subject-matter of this suit consists of 4,420,076 acres of land in the Cherokee country about to be allotted in severalty among the Cherokee people entitled to participate in the distribution of the common property of the Cherokee Nation. The case was transmitted to the court by the Secretary of the Interior on the 24th of February, 1903. The Secretary thus states in his letter of transmittal the nature of the controversy:

"A controversy has arisen as to the rights of white persons intermarried with Cherokee citizens, and a protest has been filed with this Department on behalf of a large number of citizens of the Cherokee Nation by blood against the enrollment of intermarried persons, 'so as to recognize their right to participate in the distribution of any of the common property of the Cherokee Nation of whatever kind or character.' It is asserted, on the one hand, that the Cherokee laws have never recognized the right of 'intermarried citizens' to share in the

distribution of the property of the nation, and, on the other hand, that the Cherokee laws as well as the laws of Congress recognize those persons who have been married to Cherokee citizens in accordance with the laws of the Cherokee Nation relating to marriage as full citizens of such nation entitled to share equally with full-blooded citizens in the property of the tribe."

Since the case was transmitted and tried Congress has made the following enactment:

"That in the case entitled 'In the matter of enrollment of persons claiming rights in the Cherokee Nation by intermarriage against the United States, Departmental, numbered seventy-six,' now pending in the Court of Claims, the said court is hereby authorized and empowered to render final judgment in said case, and either party feeling itself aggrieved by said judgment shall have the right of ap-
61 peal to the Supreme Court of the United States within thirty days from the filing of said judgment in the Court of Claims. And the said Supreme Court of the United States shall advance said case on its calendar for early hearing." (Act 3d March, 1905, 34 Stat. L., p. —.)

Upon the facts presented, and after carefully considering the questions discussed, the court has reached the following conclusions:

1. The constitution and laws of the Cherokee Nation contemplate three classes of citizens: First, those who are Cherokees by blood; second, those who are Cherokees by intermarriage and the payment of $500; third, those who are citizens by intermarriage alone. As to the first class, they are communal owners according to Indian tradition and Indian law; and their citizenship, under the constitution of the Cherokee Nation, is indefeasible save by expatriation and becoming citizens of another power. As to the second class, they possess the political rights of Cherokees by virtue of marriage, and become communal owners of the soil and of the vested funds of the nation by virtue of their payment "into the general fund of the national treasury of a sum of money to be ascertained and fixed by the national council equal to the pro rata share of each native Cherokee in the lands and vested value of the nation, estimated at $500." (Revised Code, 1874, p. 224.) As to the third class, according to special provisions and necessary implication and long-continued usage, "the rights and privileges" of their limited citizenship do not extend to sharing in the communal property of Cherokees by blood or to an interest in the vested funds of the nation.

The constitution of the Cherokee Nation, 1839, relates to Cherokees by blood, to their communal ownership of land and to their citizenship indefeasible save by expatriation (art. 2). The provisions of Cherokee law relating to intermarriage with whites and to citizenship thereby acquired are statutory.

Under the primitive law of the Cherokees, derived from that of the Iroquois, descent was through the mother, and the nation was subdivided into clans or tribes. Within a clan or tribe the members were deemed brothers and sisters and marriage between them unlawful.

Consequently intermarriage could only be between members of one tribe and members of another tribe. Such being the fundamental and moral basis of marriage and descent, it followed that when a man married a woman of another tribe he left his own and became a resident in the tribe of his wife. When she died he might continue, through courtesy, to dwell among and be a member of the tribe. If he afterwards married a woman of another tribe, he went to dwell with her and among her people. He was not excluded or expelled from the tribe of his first wife, but by his second marriage and change of domicile he necessarily withdrew from it. (*Morgan's League of the Iroquois*, pp. 79, 87.))

The law of Indian tribal citizenship or membership was in principle like our own law of domicile—a man does not lose his domicile until he acquires another. When he acquires a new domicile the old one ceases to exist for him. So the Indian widower remained a *quasi* citizen or member of his wife's tribe until he married into another, and then on the acquirement of a new membership in another tribe the old one ceased to be.

If the Indian husband abandoned his wife, abandonment meant withdrawing from her tribe; and again necessarily he ceased
62 to have any right or interest therein for the simple reason that whatever right or interest he had within the tribe was due to his being the actual husband of a daughter of the tribe. The statutes of the Cherokees are but a written codification of the primitive law, somewhat adapted in form to the changed conditions of civilization. But the fundamental, primitive idea runs through them, insistent, constant, that all of the man's rights who marries into the nation are dependent upon and linked to his wife as a daughter of the nation; and when that link is broken, whether by abandonment or by marriage with some woman who is not a daughter of the Cherokee Nation by blood, he thereby drops out of the nation and ceases to be a citizen.

But the fact that there are citizens in the Cherokee country who are communal owners and that there are citizens who are not communal owners presents the question of law whether the lands which form the subject matter of this suit—lands which are to be divided by allotment among the citizens of the Cherokee Nation—are communal property and belong exclusively to one class of citizens, or whether they constitute national property, in which each and every citizen of the nation has an equal interest independently of the character of his citizenship.

2. That all lands of the Cherokees were primarily communal is too well settled to need reiteration. (*Western Cherokees v. United States*, 27 C. Cls. R., 1; *Journeycake v. Cherokee Nation*, 28 *id.*, 281, 303, 305; *Whitmire v. Cherokee Nation*, 30 *id.*, 138, 158.)

That the United States have repeatedly recognized in their transactions with the Cherokees the dual character of the people—sometimes national, sometimes communal—has appeared in many decisions. (*Eastern Cherokees v. United States*, 20 C. Cls. R., 449; *Western*

Cherokees v. Same, 27 *id.,* 1; *Shawnees v. Same,* 28 *id.,* 447; *Delawares v. Cherokee Nation,* 28 *id.,* 281.)

That the intermarried whites are not communal owners except in cases where they paid into the general fund of the national treasury a sum of money equal to the pro rata of each native Cherokee in the lands and vested wealth of the nation is a legal condition which appears clearly in the history and statutes of the nation. The controlling principle has been that the "rights and privileges" acquired by marriage and residence were political rights and privileges, which did "not extend to right of soil or interest in the vested funds of the nation." The right to an estate or interest in the communal property has always had to be paid with a price. In the case of the Delawares they became communal owners by virtue of the treaty, but they also had to pay, first, an amount proportionate to their numbers into the national fund of the Cherokees, and, second, an amount equal to $1 per acre for 160 acres for each individual of the Delaware tribe, analogous to the payment of $500 by an intermarried white who would become a communal owner. In the case of the Freedmen nothing was paid, because their incorporation with the Cherokees as citizens and communal owners was enforced by the United States as a condition to the continued existence of the Cherokee Nation. "At the close of the civil war the Cherokee country was virtually conquered territory, and the Cherokee Nation at the mercy of the United States" (*Whitmire v. Cherokee Nation,* 30 C. Cls. R., 138, 150). The Cherokee Nation had taken sides in the civil war, it had been overthrown when the Confederate States fell, and the will of the conqueror was superior to the constitution and statutes.

63 These facts make a strong case against the intermarried whites, and if they were the only facts probably would be deemed sufficient to establish conclusively the exclusive communal rights of those who are Cherokees by blood.

But in the case of the Delawares (*Cherokee Nation v. Journeycake,* 155 U. S. R., 196, 208) the Supreme Court has said: *"In December, 1838, a patent was issued to the Cherokees for these lands. By that patent whatever of title was conveyed was conveyed to the Cherokees as a nation, and no title was vested in severalty in the Cherokees or any of them."* And again: *"Not only does the Cherokee constitution thus provide that the lands shall be common property, but also the legislation of the Cherokee Nation from 1839 on to the present time abounds with acts speaking of these lands as 'public domain' or 'common property' of the Cherokee Nation."* And again (p. 208): *"Now, if these lands be the public domain, the common property of the Cherokee Nation, all who are recognized as members and citizens of that nation are alike interested and alike entitled to share in the profits and proceeds thereof."* And again (p. 212): *"It must be borne in mind that the rights and interest which the native Cherokees had in the reservation and outlet sprang solely from citizenship in the Cherokee Nation, and that the grant of equal rights as members*

of the Cherokee Nation naturally carried with it the grant of all rights springing from citizenship."

In that case this court had previously reviewed the statutes relating to the "public domain" of the Cherokee Nation and said (28 C. Cls. R., 281, 314): "With this power of legislation and control of the public domain and the *jus disponendi* lodged in the government of the nation, it is plain that the communal element has been reduced to a minimum and exists only in the occupied lands." The decision of the Supreme Court affirming the decision of this court goes further, and holds that all lands ceded by the treaties of February 14, 1833, and December 29, 1835, embraced in the patent issued in 1838, were "conveyed to the Cherokees as a nation," and consequently were never communal property.

The question whether all intermarried white citizens are entitled to share as such in the distribution of these lands, and the question whether all intermarried whites are citizens, are distinct questions.

3. The constitution of the Cherokee Nation (1839) found the lands of the Cherokees communal, and decreed that they "shall remain common property" (sec. 2). It made the improvements thereon "the exclusive and indefeasible property of the citizens, respectively, who made or may rightfully be in possession of them," but made no provision concerning citizenship or the admission of aliens by adoption or naturalization. The grant of the legislative power is brief, but comprehensive: "The national council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the nation, which shall not be contrary to this constitution (sec. 14).

The amendments to the Constitution (1866) still declare that "the lands of the Cherokee Nation shall remain common property," but at the same time introduce a modification, "until the national council shall request a survey and allotment of the same in accordance with the provisions of article 20 of the treaty of 19th of July, 1866, between the United States and the Cherokee Nation" (sec. 2).

64 The right of a white person to become a citizen of the Cherokee Nation therefore was granted by statute, and not by the Constitution. It was a statutory, not a constitutional, right. It seems, therefore, clear that the power which created—the legislative power—might restrict, so long as it did not infringe upon any requirement of the Constitution.

In 1874 the rapidly growing value of the Cherokee lands was becoming perceptible. On the one hand there were white men who desired to marry into the tribe, and, marrying and residing in the nation, desired the rights and privileges of citizens; on the other hand there were white adventurers desiring to share in the wealth of the nation, soon, it was believed, to become available to individual citizens. The public welfare might be benefited by allowing the one, and most certainly would be conserved by excluding the other. No restriction appeared to exist in the constitution which would for-

bid the national council from admitting white men to citizenship upon the condition that they should not acquire an estate or interest in the communal of common property of the nation. Accordingly, the national council enacted, what was already the law by implication, an express proviso to section 75 of the Code of 1874: "That the rights and privileges herein conferred [the right of white persons to acquire citizenship by intermarriage] shall not extend to right of soil or interest in the vested funds of this nation;" which provision, however, did not take effect until November 1, 1875.

Whoever married after that enactment married with due notice of the limitation set upon his rights and privileges as a citizen. The statute seems just to the then communal or common owners, and seems but simple prudence and wisdom in looking to the exclusion of persons coming into the nation with unworthy, ulterior designs. There is no reason for overruling it unless it be contrary to the Cherokee constitution or the statutes of the United States.

The constitutional amendments of 1866 set forth that "All native-born Cherokees, all Indians, and whites legally members of the nation by adoption, and all freedmen who have been liberated by voluntary acts of their former owners or by law, as well as free colored persons who were in the country at the commencement of the rebellion * * * shall be taken and deemed to be citizens of the Cherokee Nation" (sec. 5).

These constitutional amendments were brought about by the action of the United States at the close of the civil war in dictating that the slaves or freedmen or free persons of color in the Cherokee country should not only be admitted to the rights of citizenship, but to an equal participation in the communal or common property of the Cherokees. The Cherokees seem to have veiled their humiliation by these general declarations of the persons who should be taken and deemed to be citizens. But, be that as it may, the overthrow of the Cherokee Nation and the treaty of peace, 1866, and the terms dictated by the United States whereby their former slaves were made their political equals and the common property of the Cherokees was to be shared equally with their servants and dependents was in effect a revolution. The constitutional amendment quoted was simply declaratory of the new order of things. It is not necessarily prospective, and it does not impose limitations upon the legislative power with regard to the naturalization or future adoption of aliens as citizens.

Under the polity of the Cherokees citizenship and communal
65 ownership were distinct things. The citizen who annually received an annuity derived from a communal fund held by the United States, and the citizen who never received a dollar from the fund and never so much as thought of receiving it, formed a concrete object lesson in constitutional law not easily effaced from the common mind.

There are provisions in the statutes of the United States relating to the enrollment of the Cherokees for the purposes of the allotment of lands which have been relied upon as controlling the court and secur-

ing the property rights of all intermarried whites. But, in the language of Chief Justice Fuller in *Stephens v. Cherokee Nation* (174 U. S. R., 445, 488): "It may be remarked that the legislation seems to recognize, especially the act of June 28, 1898, a distinction between admission to citizenship merely and the distribution of property to be subsequently made, as if there might be circumstances under which the right to a share in the latter would not necessarily follow from the concession of the former." It can not be supposed for a moment that Congress intended by this legislation to take away from some of the Cherokee people property which was constitutionally theirs or to confer upon white citizens property which they were not legally entitled to have. The term "citizens" in these statutes of the United States must be construed to mean those citizens who were constitutionally or legally entitled to share in the allotment of the lands.

4 The question whether all intermarried whites are citizens is a distinct question. There come before the court a class of claimants known as the "married out and abandonment cases," claimants who allege on the one hand, that they became citizens of the Cherokee Nation by intermarriage, but concede, on the other hand, that they have since married persons, white persons, having no rights of Cherokee citizenship by blood, or that they have abandoned their Cherokee wives. It is contended on behalf of these claimants that the question of their continued citizenship or loss of citizenship can not be inquired into; that having once been entitled to the rights and privileges of citizenship as intermarried whites, they can only be deprived of them by a proceeding in the nature of office found.

"Every person is supposed to be a natural-born subject that is resident in the kingdom," says Bacon. (11 Wheat., p. 356.) If some such person, resident in the United States and therefore owing a local allegiance to this Government (*Carlisle & Henderson's case,* 16 Wall., 147), should bring an action in this court and the Government should file a plea to the jurisdiction averring that the claimant was an alien not entitled to maintain an action against the Government of this country within the intent and meaning of Revised Statutes, section 1068, could such a claimant turn around and say that the question of his citizenship could be inquired into only by office found? Assuredly not. The fact that there has been no proceeding in the nature of office found against these claimants does not, in the opinion of the court, control the case. Office found is a proceeding preliminary to the eviction of an alien in possession of real property which he is entitled to hold if he be not an alien. The King should not evict him forceably, and could not maintain an action of ejectment, not having a superior title. The proceeding is nothing more than a form of action. A man alleging one state of facts must sue in ejectment; alleging another state of facts,
66 he must sue in trespass, etc. So the King, seeking the aid of a court to establish the fact that the person in possession is incapable of holding the land as against the Crown, must do so by the proceeding of office found. These intermarried whites are not

grantees or devisees seized and in possession of land, occupying the position of defendants. They occupy the contrary position—of plaintiffs seeking to recover money—and it is obligatory upon them to establish their right to it. To say that a white man can share in the property of the Cherokees for the reason that at one time in his life he was the husband of a Cherokee woman, and to say that this court or the Secretary of the Interior must hold that he is still the husband of a Cherokee woman because the contrary has not been established in another proceeding, is an appeal to technicality which the court can not uphold. These claimants, like other plaintiffs, must prove their case; asserting a present right, they must establish present conditions. The laws and usages of the Cherokees, their earliest history, the fundamental principles of their national policy, their constitution and statutes, all show that citizenship rested on blood or marriage; that the man who would assert citizenship must establish marriage; that when marriage ceased (with a special reservation in favor of widows and widowers), citizenship ceased; that when an intermarried white married a person having no rights of Cherokee citizenship by blood, it was conclusive evidence that the tie which bound him to the Cherokee people was severed and the very basis of his citizenship obliterated.

The Cherokee statute which has been cited (Laws of 1892, section 669) gives a proceeding in the nature of office found, but, nevertheless, is confirmatory of the views hereinbefore expressed. It relates to cases where the Cherokee government takes the initiative to accomplish a purpose. That is to say, where an intermarried white man has forfeited his rights of citizenship in the nation by acts which declare such forfeiture "and the nation requires his removal beyond the limits of its territory," this proceeding must be resorted to, to be followed by a call on the United States Indian agent "to remove such a white man." It is in principle precisely like the common-law procedure of office found, and exists for the same reason—that the Government may exercise a right dependent upon only the alienage of a person living within its territory presumably a citizen.

To prevent misapprehension, it is stated and to be understood that the only things intended to be decided by this opinion are, first, that, under the decision of the Supreme Court in *Cherokee Nation v. Journeycake* (155 U. S. R., 196, 208), the lands which are to be alloted among the Cherokees are not communal property, but constitute the public domain of the nation; second, that in this public domain all Cherokees by blood and whites by intermarriage who became citizens prior to the 1st day of November, 1875, are equally interested and have equal per capita rights in the allotment of lands; third, that the rights and privileges of those intermarried white citizens who married persons of Cherokee blood subsequent to the 1st day of November, 1875, do not extend to right of soil or interest in the vested funds of this nation, and that they are not entitled to share in the allotment of the public domain, except in cases where they paid into the general fund of the National Treasury the sum

of $500 each; fourth, that those white citizens who, subsequent to their marriage with persons of Cherokee blood, have married
67 persons not of Cherokee blood, and those white men who, being husbands of women of Cherokee blood, have abandoned their wives, are not citizens of the Cherokee Nation and are not entitled to participate in the allotment of these lands.

A decree will be entered in this case following the form of that which was entered in the case of *Journeycake v. Cherokee Nation* (28 C. Cls. R., 281), in accordance with the directions heretofore set forth in this opinion.

The facts stipulated by the parties (Record p. 99) and any additional facts which may be stipulated, will stand as the findings of the court for the purposes of appeal, if any. If no appeal be taken by any party the foregoing opinion will be certified to the Secretary of the Interior for his information and guidance, as provided by law, and in response to his communication of February 24, 1903.

68 VI.—*Findings of Fact and Conclusions of Law. Filed May 18, 1905.*

No. 76. Departmental.

IN THE MATTER OF ENROLLMENT OF PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE

vs.

THE UNITED STATES.

First: The subject matter of and the questions involved in this cause are as set forth in the letter of the Secretary of the Interior, dated February 24th, 1903, to be found on pages 2 and 3 of this record.

Second: The parties to this cause are as follows:

Males Marrying Cherokees Prior to 1875.

(*a.*) Solon James, and other male white persons in the Cherokee Nation, who shall possess the residence qualifications, and whose names shall appear upon one or more of the census or other rolls of the Cherokee Nation, and who claim the right to be enrolled as citizens of the Cherokee Nation, entitled to share equally with full blood Cherokees in the distribution of the property of the tribe, by virtue of marriages entered into, subsequent to November 26th, 1866 under and in accordance with the law of the Cherokee Nation of October 15th, 1855, (regulating the intermarriages of white men) with Cherokee citizens by blood, (and who prior to September 1 1902, made application, as intermarried white claimants to the Commission to the Five Civilized Tribes, for enrollment under the Act of Congress of June 28, 1898, May 31, 1900, and July 1, 1902)

Males Marrying Delawares Prior to '75

(*b.*) John Doe, and other male white persons in the Cherokee Nation, who prior to September 1, 1902, made application, as intermarried white claimants, to the Commission to the Five Civilized Tribes for enrollment under the Acts of Congress of June 28th, 1898, May 31, 1900 and July 1, 1902, who shall possess the residence qualifications and whose names shall appear upon one or more of the census or other rolls of the Cherokee Nation, and who claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the Tribe, by virtue of marriages under the law of the Cherokee Nation of October 15, 1855 subsequent to April 8, 1867, with those Delaware Indians who, by virtue of the treaty of July 1, 1866, and the contract thereunder of April 8, 1867, acquired the rights of native Cherokees in said nation.

Males Marrying Shawnees Prior to '75.

(*c.*) Richard Roe and other male white persons in the Cherokee Nation, who, prior to September 1, 1902, made application as intermarried white claimants, to the Commission to the Five Civilized Tribes for enrollment under the acts of Congress of June 28th, 1898, May 31, 1900 and July 1, 1902, who shall possess the residence qualifications and whose names shall appear upon one or more of the census or other rolls of the Cherokee Nation, and who claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the tribe, by virtue of marriages subsequent to June 9th, 1869, under the law of the Cherokee Nation of October 15, 1855 with those Shawnee Indians who by virtue of the treaty of July 1, 1866, and the contract thereunder of June 9th, 1869, acquired the rights of native Cherokees in said nation.

Males Marrying Cherokees '75-77.

(*d.*) Thomas Little and other male white and foreign persons in the Cherokee Nation, who, prior to September 1, 1902, made application as intermarried white claimants to the Commission to the Five Civilized Tribes for enrollment under the Acts of Congress of June 28th, 1898, May 31, 1900, and July 1, 1902, who shall possess the residence qualifications and whose names shall appear upon one or more of the census or other rolls of the Cherokee Nation, and who claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the tribe by virtue of marriages with Cherokee citizens by blood, entered into under and in accordance with the law of the Cherokee Nation regulation the intermarriage of white men and foreigners subsequent to January 1, 1875, and prior to November 28th, 1877, none of whom paid, or

offered to pay into the general fund of the national treasury of the Cherokee Nation the sum of $500 or any other sum estimated as equivalent to the pro rata of each native Cherokee in the lands and vested wealth of the Cherokee Nation.

Males Marrying Delawares '74-'77

(*e.*) Jacob Bartles, and other male white and foreign persons in the Cherokee Nation, who, prior to September 1, 1902, made application, as intermarried white claimants to the Commission to the Five Civilized Tribes, for enrollment under the acts of Congress of June 28th, 1898, May 31, 1900, and July 1, 1902, who shall possess the residence qualifications and whose names shall appear upon one or more of the census or other rolls of the Cherokee Nation, and who claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the tribe by virtue of marriages entered into under and in accordance with the law of the Cherokee Nation, subsequent to January 1, 1875, and prior to November 28, 1877, with those Delaware Indians, who by virtue of the treaty of July 1, 1866, and the contract thereunder of April 8, 1867, acquired the rights of Native Cherokees in said nation none of said intermarried white persons, however, paying or offering to pay into the general fund of the national treasury of the Cherokee Nation the sum of $500 or any other sum estimated as equivalent to the pro rata share of each native Cherokee in the lands and vested wealth of the Cherokee Nation.

Males Marrying Shawnees '75 to '77

(*f.*) Thomas Jones and other male white and foreign persons in the Cherokee Nation, who prior to September 1, 1902, made application as intermarried white claimants, to the Commission to the Five Civilized Tribes for enrollment under the acts of Congress
71 of June 28th, 1898, May 31, 1900, and July 1, 1902, who shall possess the residence qualifications and whose names shall appear upon one or more of the census rolls of the Cherokee Nation, and who claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with the full blood Cherokees in the distribution of the property of the tribe, by virtue of marriages entered into under and in accordance with the law of the Cherokee Nation subsequent to January 1, 1875, and prior to November 28th, 1877, with those Shawnee Indians who by virtue of the treaty of July 1, 1866, and the contract thereunder of June 9th, 1869 acquired the rights of native Cherokees in said nation; none of said intermarried white persons however, paid or offered to pay into the general fund of the national treasury of the Cherokee Nation the sum of $500.00 or any other sum estimated as equivalent to the pro-rata share of each native Cherokee in the lands and vested wealth of the Cherokee Nation.

Males Marrying Cherokees '77 to 80.

(*g.*) James H. Cohee, and other male white and foreign persons in the Cherokee Nation, who, prior to September 1, 1902, made application as intermarried white claimants, to the Commission to the Five Civilized Tribes for enrollment, under the acts of Congress of June 28th, 1898, May 31, 1900, and July 1, 1902, who shall possess the residence quilifications and whose names shall appear upon one or more of the census or other rolls of the Cherokee Nation, and who claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the Tribe, by virtue of marriage with Cherokee citizens by blood, entered into under and in accordance with the law of the Cherokee Nation regulating intermarriage of white men and foreigners, subsequent to November 28th, 1877, and prior to December 11th, 1880.

Males Marrying Delawares '77 to '80.

(*h.*) William Warren and other male white and foreign persons in the Cherokee Nation, who, prior to September 1, 1902, made application, as intermarried white claimants, to the Commission to the Five Civilized Tribes for enrollment under the acts of Congress of June 28th, 1898, May 31, 1900 and July 1, 1902, who shall possess
the residence qualifications and whose names shall appear
72 upon one or more of the census or other rolls of the Cherokee Nation, and who shall claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the tribe by virtue of marriages entered into under and in accordance with the law of the Cherokee Nation regulating intermarriage of white men and foreigners, subsequent to November 28th, 1877, and prior to December 11th, 1880 with Delaware Indians, who, by virtue of the treaty of July 1, 1866, and the contract thereunder of April 8, 1867, acquired the rights of native Cherokees in said nation.

Males Marrying Shawnees '77-'80.

(*i.*) Richard Smith and other male white and foreign persons in the Cherokee Nation, who prior to September 1, 1902, made application, as intermarried white claimants, to the Commission to the Five Civilized Tribes, for enrollment under the acts of Congress of June 28th, 1898, May 31, 1900, and July 1, 1902, who shall possess the residence qualifications and whose names shall appear upon one or more of the census or other rolls of the Cherokee Nation, and who claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the tribe, by virtue of marriages entered into under and in accordance with the laws of the Cherokee Nation regulating intermarriage of white men and foreigners, subsequent to

November 28th, 1877, and prior to December 11th, 1880, with Shawnee Indians, who by virtue of the treaty of July 1, 1866, and the contract thereunder of June 9, 1869, acquired the rights of native Cherokees in said nation.

Males on the 1880 Roll.

(*j.*) William Jackson and other male white and foreign persons among those included within one of the foregoing classes, and whose names shall appear upon the authenticated census roll of the Cherokee Nation for the year 1880.

Females on the 1880 Roll.

(*k.*) Amanda Jones and other female white and foreign persons among those included within one of the foregoing classes and whose names shall appear upon the authenticated census roll of the Cherokee Nation for the year 1880.

73 *Males Marrying Cherokees* '80 *to* '95.

(*l.*) George W. Seigel and other male white and foreign persons, who prior to September 1, 1902, made application, as intermarried white claimants, to the Commission to the Five Civilized Tribes for enrollment under the acts of Congress of June 28th, 1898, May 31st, 1900, and July 1, 1902, who shall possess the residence qualifications and whose names shall appear upon one or more of the census or other rolls of the Cherokee Nation, and who claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the tribe, by virtue of marriages entered into under and in accordance with the law of the Cherokee Nation regulating the intermarriage of white men and foreigners (as amended on December 11, 1880) from said date to December 16th, 1895 with Cherokee citizens by blood.

Males Marry Delawares '80 *to* '95.

(*m.*) William Johnstone and other male and white foreign persons who, prior to September 1, 1902, made application as intermarried white claimants to the Commission to the Five Civilized Tribes for enrollment under the acts of Congress of June 28th, 1898, May 31st, 1900, and July 1, 1902, who shall possess the residence qualifications and whose names shall appear upon one or more of the census or other rolls of the Cherokee Nation, and who claim the right to be enrolled as citizens of the Cherokee Nation, entitled to share equally with full bloods in the distribution of the property of the tribe, by virtue of marriages entered into subsequent to December 11th, 1880, and prior to December 16th, 1895, under and in accordance with the law of the Cherokee Nation regulating the intermarriage of white men and foreigners, as amended on December 11th,

1880, with Delaware Indians, who by virtue of the treaty of July 1, 1866, and the contract thereunder of April 8, 1867, acquired the rights of native Cherokees in said nation.

74 *Males Married to Cherokees, but are on no Roll.*

(*n.*) Samuel G. Mills, and other male or female white and foreign persons, if there be any, who, prior to September 1, 1902, made application, as intermarried claimants, to the Commission to the Five Civilized Tribes, for enrollment under the acts of Congress of June 28th, 1898, May 31, 1900, and July 1, 1902, who shall possess the residence qualifications, and who claim that they have been recognized by the tribal authorities of the Cherokee Nation as citizens thereof, but whose names are not found on any of the census or other rolls of the Cherokee Nation, nor have they in any wise been admitted to the privileges of citizenship therein by the National Council or other authority, and who claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the tribe by virtue of marriages with Cherokee citizens by blood, entered into under and in accordance with the law of the Cherokee Nation regulating intermarriage of white men and foreigners subsequent to December 11th, 1880, and prior to December 16th, 1895.

Whites Admitted by Act of Council.

(*o.*) Scoonse, husband of Eliza Woodall, A. G. Greenway and other male and female white and foreign persons in the Cherokee Nation, who, prior to September 1, 1902, made application to the Commission to the Five Civilized Tribes for enrollment under the acts of Congress of June 28th, 1898, May 31, 1900, and July 1, 1902, who shall possess the residence qualifications, and who claim the right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the Tribe, by virtue of a marriage with a Cherokee citizen by blood, not contracted and solemnized under any law of the Cherokee Nation, but under the law of some other jurisdiction, as to whom the National Council of the Cherokee Nation has passed special Acts, providing that they were "admitted" or "readmitted" to citizenship the same as other adopted citizens of the Nation, rights, benefits, etc. such as the law gives adopted citizens, provided they comply with the law regulating intermarriage with white men.

75 (*p.*) Talitha J. Adair and other female white persons in the Cherokee Nation who shall possess the residence qualifications, and whose names appear upon one or more of the census or other rolls of the Cherokee Nation, and who claim the rights to be enrolled as citizens entitled to share equally with full blood Cherokees in the distribution of the property of the tribe by virtue of a marriage with a Cherokee male citizen by blood or with a Delaware-

Cherokee male citizen by blood, or with a Shawnee-Cherokee male citizen by blood, entered into subsequent to November 26, 1866, and prior to December 16, 1895, under and in accordance with the laws and customs of the Cherokee Nation, as shown by the evidence in this case, in force and applicable to such marriages at the time such marriages were entered into, and who, prior to September 1, 1902, made application as intermarried white claimants to the Commission to the Five Civilized Tribes for enrollment under the acts of Congress of June 28, 1898, May 31, 1900 and July 1, 1902.

Married Oui and Abandonment.

In the event this court should conclude that any of the foregoing white or foreign persons have a right to be enrolled as citizens of the Cherokee Nation entitled to share equally with full blood Cherokees in the distribution of the property of the tribe, then two other questions arise affecting a limited number of claimants:

(*q.*) Robert Kraus and those other white and foreign claimants who may come within the class that may be determined by the court entitled to enrollment, and whose Cherokee husbands or wives have died, and of whom it is alleged they were afterward remarried to persons not citizens of the Cherokee Nation by blood, in violation of the law of the Cherokee Nation under which the privileges of citizenship were extended to them. No proceeding was ever instituted or had against any of these claimants in, nor was there any adjudication had concerning these claimants by the circuit court of the Cherokee Nation, nor any other court; but the Commission to the Five Civilized Tribes and the Secretary of the Interior refused to enroll these claimants, independent of the question as to whether they might otherwise be entitled to enrollment, basing such refusal
76 upon their interpretation of the laws of the Cherokee Nation and testimony of witnesses before said Commission as to the alleged facts of such death and re-marriage.

(*r.*) James H. Akin and those other white and foreign claimants who may come within the class that may be determined by the court entitled to enrollment, but who it is alleged have abandoned their Cherokee wives or husbands, in violation of the law of the Cherokee Nation, under which the privileges of citizenship were extended to them. No proceeding was ever instituted or had against any of these claimants, nor was there ever any adjudication had concerning these claimants by the circuit court of the Cherokee Nation, or any other court; but the Commission to the Five Civilized Tribes and the Secretary of the Interior refused to enroll these claimants independent of the questions as to whether they might otherwise be entitled to enrollment, basing their refusal upon their interpretation of the laws of the Cherokee Nation, and testimony of witnesses before said Commission as to the facts of such abandonment.

That the matter contained in the above stipulation may be considered by this honorable court and the Supreme Court of the United

States on appeal, as, if fully proved, and that the persons mentioned as parties may be deemed to be properly before this honorable court, which it is hereby agreed has jurisdiction to pass on the merits of the case of each and every of said claimants.

That in the event that this court or the Supreme Court of the United States on appeal is of the opinion that any or all of the claimants are entitled to participate in the distribution of the lands and funds of the Cherokee Nation, that the Secretary of the Interior may be authorized to make up a roll of such claimants in accordance with the decree of this honorable court or of the said Supreme Court of the United States on appeal.

77 Third. That the Cherokee national council, with the approval of the principal chief, on the 15th of October, 1855, passed the following act:

"An Act Regulating Intermarriages with White Men.

"Whereas the peace and prosperity of the Cherokee people require that in the enforcement of the laws jurisdiction should be exercised over all persons whatever, who may from time to time be privileged to reside within the territorial limits of this nation: Therefore.

"*Be it enacted by the national council,* That any 'unmarried' white man desiring to marry a Cherokee woman shall be, and is hereby, required to obtain a license for the same from any of the clerks of the district courts of the several districts.

"*Be it further enacted,* That before any license as provided above shall be issued, the person applying shall be, and is hereby, required to pay to the clerk to whom application is made the sum of five dollars, and also required to take the following oath:

" 'I do solemnly swear that I will honor, defend, and submit to the constitution and laws of the Cherokee Nation, and will neither claim nor seek from the United States Government or its judicial tribunals any protection, privileges, or redress, incompatible with the same as guaranteed to the Cherokee Nation by the United States, in treaty stipulations entered into between them.'

"*Be it further enacted,* That all white men applying for license, as provided in the first section of this act, shall, before obtaining the same, be required to present to the said clerk a certificate of good moral character, signed by at least seven respectable Cherokee citizens.

"*Be it further enacted,* That all judges of this nation, and every regular minister of all evangelical denominations having the care of souls, are hereby authorized and empowered to solemnize the rites of matrimony, according to the ceremonies usually observed and performed in such cases, under the provisions of this act.

"*Be it further enacted,* That no marriage between a citizen of the United States and a female citizen of this nation, entered into within the limits of this nation, except as hereinbefore authorized and provided, shall be legal; and any judge or minister who shall engage or assist in solemnizing any such marriage shall, upon conviction before

any district court of this nation, be fined one hundred dollars, and it shall be the duty of the solicitor of the district in which such judge or minister may reside to collect the same, who shall be entitled for his services to twenty per cent of the amount collected, and who shall place the remainder in the hands of the national treasurer for public benefit.

"*Be it further enacted,* That persons performing the marriage ceremony under the authority of a license, provided for above, shall be required to attach a certificate of marriage to the back of the license, which shall be returned. The holder of the license and certificate shall then place the same in the hands of the clerk of the district court, whose duty it shall be to record the same in his office.

"*Be it further enacted,* That any white citizen of the Cherokee Nation, by marriage, etc., who shall use the intercouse law or laws (as they are termed) in the prosecution of a Cherokee Indian, for any criminal offense committed within the limits of the Cherokee Nation, shall forfeit his right of citizenship to the same, and be subject to be dealt with as other white intruders in the country, and shall be removed out of this nation.

"*Be it further enacted,* That should any white man or woman become a citizen of the Cherokee Nation by marriage and be left a widow or widower by the decease of the Cherokee wife or husband, such surviving widower or widow shall continue to enjoy Cherokee privileges, unless such white widower or widow shall marry a white man or woman (as the case may be); then, in that case, all of his or her right to Cherokee citizenship shall cease.

"*Be it further enacted,* That any white man who shall lawfully marry under the provisions of this act, and then or afterwards abandon his wife, shall not be entitled to any of the rights and privileges of a citizen of the Cherokee Nation, but shall be, and is hereby, considered, and shall be removed, as an intruder."

Fourth. That the act of the national council approved December 11, 1880 (testimony W. O. Bruton, p. 7), is the only act passed by the national council and approved by the principal chief in the year 1880 upon the subject of intermarriage of white persons and foreigners in the Cherokee Nation, and that said act is the only act passed by the national council on December 10, 1880, upon that subject, and that the quotation on page 7 of the answer in this cause is taken from the compilation of the laws of the Cherokee Nation made in 1892.

78 Fifth. In chapter 12, article 15, section 75, relating to "intermarriage of whitemen and foreigners," of the new code of Cherokee laws which became effective Nov. 1st., 1875, the following proviso was enacted by the National Council, to wit:

"That the rights and privileges herein conferred, shall not extend to right of soil or interest in the vested funds of this nation, unless such adopted citizen shall pay into the general fund of the national treasury, a sum of money to be ascertained and fixed by the National Council, equal to the "pro rata" share of each native Cherokee,

in the lands and vested wealth of the nation, estimated at five hundred dollars, and thereafter conform to the constitution of the nation, and to the laws made or to be made in pursuance thereof, in which case he shall be deemed a Cherokee to all intent, and be entitled to all the rights of other Cherokees."

Sixth. That by the act of the Cherokee Council approved Nov. 28th, 1877, chap. 12, article 15, section 75, above refererd to was amended by striking out all of said section after the words "this nation" where said words occur in the third line in such proviso of said section. By such amendment that portion of said section permitting intermarried persons to acquire a share in the lands and vested wealth of the Cherokee Nation by the payment of the sum of five hundred (500 dollars was repealed and said proviso as amended reads as follows:—

"*Provided also,* That the rights and privileges herein conferred shall not extend to right of soil or interest in the vested funds of this nation."

Seventh. November 27th, 1880, the following act was passed:

"Whereas, quite a number of our citizens have intermarried with Indians, members of other tribes in this territory, and it has always been the custom of our people to recognize such marriages as legal until the taking of the last census, when their rights as citizens were called in question: Therefore,

"*Be it enacted by the national council,* That an Indian, a member of any of the tribes of this territory, who has married or shall hereafter marry a Cherokee citizen of this nation, at the time of such marriage, in accordance with the law regulating marriage between our own citizens, shall be, and is hereby, deemed a Cherokee citizen to all intents and purposes, and entitled to all the rights of other Cherokees."

79 Eight. Dec. 11th, 1880, the following act was passed:

"'Ten respectable citizens of the Cherokee Nation, who are Cherokees, Delawares, or Shawnees by blood, be authorized to sign a certificate of moral character of any white man or foreigner desiring a license to marry a Cherokee, Delaware, or Shawnee woman.

"'*Be it further enacted,* That all citizens of the United States and foreigners obtaining a license to marry a Cherokee, Delaware, or Shawnee woman under the provisions of section 69, article 15, New Code, be required to pay the district clerk the additional sum of $5, to be turned over to the national treasurer for the benefit of the Cherokee Nation on the first Monday in November of each year, beginning with 1881.'

"Tahlequah, Cherokee Nation, December 10, 1880.

"OSI HAIRE,
Speaker of Council.
"D. R. HICKS,
Clerk of Council.

"Concurred in by Senate, with the following amendments:

"'*Be it further enacted,* That all United States citizens or foreign-

ers desirous of marrying a Cherokee, Delaware, or Shawnee woman, citizen of this nation, shall on application for marriage licenses present to the clerk of the district in which he is desirous of marrying a certificate of good moral character, signed by the county clerk and sealed with the seal of the county of which he is a legal voter.'

"December, 1880.

"S. H. BENGE,
President of Senate.
"J. L. SPRINGSTER,
Clerk of Senate.

"Amendment concurred in by council December 11, 1880.

"OSI HAIRE,
Speaker of Council.
"D. R. HICKS,
Clerk of Council.

"Approved December 11, 1880.

"D. W. BUSHYHEAD,
"Principal Chief of Cherokee Nation."

Ninth. December 9th, 1880, the following act was passed:

AN ACT AUTHORIZING THE CENSUS RETURNS OF 1880, AND PROVIDING FOR A COPY THEREOF.

SECTION 1. *Be it enacted by the national council,* That the register or schedule of citizens of the Cherokee Nation submitted to the principal chief by the census takers of the year 1880, under requirement of the act providing for taking the census of the Cherokee Nation, as the said register or schedule has been examined, revised, and amended by the committees of the present national council, duly appointed for the purpose and by them submitted to and accepted by the council, is hereby approved as a true and correct list of persons acknowledged and recognized to be citizens of the Cherokee Nation at and within the time the said census was authorized to be taken.

SEC. 2. *Be it further enacted,* That there shall be made in fair and legible handwriting and under the supervision of the principal chief, as a neat and complete alphabetical transcript or copy of all names of citizens and noncitizens to be found in the census returns revised and amended as before mentioned, with such descriptive matters and things as are attached to each name. The work of making such copy shall be done by two clerks of the executive department, duly appointed and instructed by the principal chief to perform the same; and who shall receive as compensation therefor, when the said work shall have been finished, approved, and filed as provided by this act, the sum of ($250.00) two hundred and fifty dollars each, for which

amounts the principal chief is authorized to draw "preferred" warrants upon the general fund.

The said transcript or copy shall be made upon blank forms of the like kind furnished the census takers to take the census of 1880.

SEC. 3. *Be it further enacted,* That when the said copy shall be made and completed as hereinbefore provided, the "returns" of each district as copied shall be by the said clerks submitted to the principal chief duly certified to by them as to pages, number of names in each schedule, and that the copy has been made correctly according to the provisions of this act. When so certified, and upon the examination of the principal chief approved by him, he shall be authorized to indorse the copy of the returns of each district as so approved, and place the same on file in the executive office for safe-keeping and general reference under his care and direction.

80 SEC. 4. *Be it further enacted,* That any person, citizen of this nation at the time of taking the census of 1880 (March and April), who shall have been inadvertently omitted to be so registered by the census takers or the committee appointed to revise the census, and whose name does not appear enrolled or recorded otherwise, and who shall desire to be enrolled as a citizen shall be required to make satisfactory showing to the principal chief, by methods and evidence which he may consider sufficient in each case, that such person was a citizen of the nation when the census was being taken and of what district, and the principal chief is requested to report the names of all persons who shall apply under this section with the material facts ascertained by him in each case to the national council of 1881 for their information and action.

SEC. 5. *Be it further enacted,* That all persons whose names have been reported by the census takers in schedule 1 as citizens, and whom the revising committees of this council have marked and signified as not entitled to be returned, shall be summoned by the principal chief to appear before the commission on citizenship at their next September session (1881) for the adjudication of their claims according to the provisions of law relating to "doubtful citizens" and the names of all persons who have appeared shall appear before said commission as "doubtful citizens," either by authority of the acts of December 3, 1879, and authorizing the taking of the census (not including "new claimants" enrolled in schedule 4), or by authority of this act in whose favor the said commission have decided or shall decide, shall be by the executive secretary attached to the official copy of citizens hereinbefore authorized to be made and filed in the executive office.

(Tahlequah, Cherokee Nation), December 6, 1880.

S. H. BENGE,
President Senate.

J. L. SPRINGSTON,
Clerk of Senate.

Concurred in by the council December 9, 1880.

OSI HAIR,
Speaker Council.

D. R. HICKS,
Clerk Council.

Approved December 9, 1880.

D. W. BUSHYHEAD,
Principal Chief Cherokee Nation.

Tenth. The National Council requested the survey and allotment of the lands of the Cherokee Nation in accordance with the provisions of Article 20th of the Treaty of the 19th of July, 1866, between the United States and the Cherokee Nation as provided for by Section 2, Article 1 Amendments to the Constitution of the Cherokee Nation.

Eleventh. That the Cherokee national council, with the approval of the principal chief, on December 6, 1890, passed the following act:

"AN ACT giving the circuit courts authority to declare the forfeiture of the rights of certain adopted citizens.

"Be it enacted by the national council, That the circuit courts shall have authority to hear and determine all cases that may be brought before it by the solicitors of the several districts, or other persons wherein it may be alleged that any citizen of the United States or other government, adopted by intermarriage under the laws of the Cherokee Nation, has forfeited the rights of citizenship by acts which declare such forfeiture. Proceedings in such cases shall be by citation if the party be resident in the Cherokee Nation, or by thirty days' notice of such proceedings in the Cherokee Advocate, and be conducted as are civil suits before such courts. On the finding of verdict by the jury against such person, it shall be the duty of the clerk of the court to notify the principal chief of such finding, and it shall be the duty of the principal chief to make known such finding to, and call on, the United States Indian agent for the removal of such person beyond the limits of the Cherokee Nation. It shall not be lawful thereafter for any clerk to issue a marriage license or permit to reside in the Cherokee Nation, in any capacity whatever, to any person so declared to have forfeited his rights to citizenship in the Cherokee Nation."

81 That during the time the law contained in the New Code of 1875, chapter 12, sections 67 to 76, inclusive, was in force, and until the same was amended on November 28, 1877, but two intermarried white persons availed themselves of the opportunity offered by the proviso of section 75 of said law, and paid into the Cherokee treasury the sum of $500 each; and that neither of said persons is a party to this suit.

That on the 8th day of April, 1867, articles of agreement were

entered into between the Cherokee Indians and the Delaware tribe of Indians; that said agreement is fully set forth commencing at page 277 of Exhibit A (New Code of 1875).

That on the 7th day of June, 1869, articles of agreement were entered into between the Cherokee Indians and the Shawnee tribe of Indians; that said agreement is fully set forth commencing at page 281 of Exhibit A (New Code, 1875).

That the Cherokee national council (in the exercise of its power to construe treaty stipulations) did, on the 27th day of April, 1886, pass an act construing the rights designed to be conferred upon freedmen and civilized Indians by the ninth and fifteenth articles of the treaty of 1866; and that the copy of said act as found in the compilation of the Cherokee laws of 1892, at pages 370 to 373, inclusive, is a true and correct copy of the original act, and that said printed copy may be used and considered to the same extent as if it was the original.

Twelfth. That the Cherokee national council, with the approval of the principal chief, on the 19th of May, 1883, passed the following act:

"AN ACT providing for the payment of the balance due on lands west of 96 degrees per capita.

"*Be it enacted by the national council,* That when the additional amount appropriated by the act of Congress of March 3rd, 1883, shall have been received by the treasurer of the Cherokee Nation the principal chief shall cause the same to be paid out 'per capita' to the citizens of the Cherokee Nation by Cherokee blood.

"*Be it further enacted,* That for the purpose of carrying out the provisions of this act the principal chief shall at his earliest convenience appoint two competent persons in each district to make correct census roll of the persons entitled and turn over the same, certified to by him, to the treasurer of the Cherokee Nation, who shall file the same in his office.

"*Be it further enacted,* That the persons appointed by the principal chief to take the census shall each be entitled to ($3.00) dollars a day while in actual service.

"*Be it further enacted,* That as soon as advised by the proper authority that the funds are ready, it shall be the duty of the treasurer to make requisition for the same, and on receiving said funds it shall be his duty to pay the same out per capita to citizens of the Cherokee Nation by blood according to the census roll. In making said payments the treasurer is hereby directed to pay the funds in person to all adult persons entitled to the same, and to parents, guardians, and heads of families representing minors and disabled persons, and to no other person or persons whomsoever; it shall be the duty of the treasurer to keep a receipt roll of the payments made and to whom, and which shall be reported to the national council next following said payment.

"*Be it further enacted,* That the sum of three hundred dollars, or so much thereof as may be necessary to defray the expenses of taking the census and preparing the proper roll, is hereby appropriated out of the funds to be received for this purpose.

"*Be it further enacted,* That the treasurer shall make the payment at Tahlequah, Vinita, Ft. Gibson, and Webbers Falls."

Thirteenth. That the Cherokee national council, with the approval of the principal chief, on November 26, 1890, passed an act providing for the distribution of the proceeds from lease of lands in the Cherokee Outlet to Cherokees by blood only.

Fourteenth. That the Cherokee national council, with the approval of the principal chief, on November 29, 1878, passed the following act:

"*Be it enacted by the national council,* That A. G. Greenway, a white man, and his two children, Alonzo and Minnie Greenway, be and they are hereby readmitted into the rights and privileges of citizens of the Cherokee Nation; provided that the same rights and no other attach to A. G. Greenway than as an adopted citizen and (white) man in the Cherokee Nation."

Fifteenth. That the Cherokee national council, with the approval of the principal chief, on December 3, 1878, passed the following act:

82 "*Be it enacted by the national council,* That David N. Allen, Mary Allen, and Joe Allen be and are hereby readmitted to all the rights and privileges of Cherokee citizens."

Concurred in by council with following amendment:

"Provided that David N. Allen, the petitioner, shall not acquire any rights except such as attach to white men, adopted citizens of (the) Cherokee Nation."

Sixteenth. That subsequent to the passage of the act approved on October 15, 1855, and particularly since the law enacted in the New Code of 1875, a large number of white persons have intermarried with Cherokees, and resided continuously thereafter in the Cherokee Nation, and did so reside at the time the distribution of funds belonging to the Cherokee people were made, in accordance with the various acts of the national council passed subsequent to 1875, or under judgments of the courts, and they were advised of said payments and were present when the same were made; and that a large number of said intermarried white persons participated in such payments by receiving moneys thereat for and on behalf of different members of their families who were entitled to the same by reason of their Cherokee blood, or because such members of their family were Delawares, Shawnees, or freedmen who had acquired the rights of native Cherokees by purchase or express grant.

Seventeenth. That no action at law or suit in equity was ever brought against the Cherokee Nation under the act respecting the liability of the nation to her own citizens, found in sections 130, 131, 132, 133, inclusive, chapter 26, New Code (1875), for or on behalf of any intermarried white person, asserting any claim to a share or

interest in the funds or any portion thereof which have been distributed since 1875.

Eighteenth. That Pauline Shannon, a Cherokee Indian woman by blood, and claiming rights of property as such, married George Shannon, a white man, prior to January 1, 1895, in accordance with the laws of the Cherokee Nation governing the intermarriage of white men and foreigners, and that children had been born to such marriage.

That S. M. Barbee, a Cherokee Indian woman by blood, and claiming rights of property as such, married Samuel Barbee, a white man, prior to January 1, 1895, in accordance with the laws of the Cherokee Nation governing the intermarriage of white persons and foreigners.

That in the year 1895 said Pauline Shannon and said S. M. Barbee, each for herself, and the first named for her children also, brought suit against Stephen Tehee, as assistant and acting chief of the Cherokee Nation, under the provision of the act respecting the liability of the Cherokee Nation to her own citizens, found in sections 130 to 133, inclusive, article 26, of the New Code (1875), demanding a distributive share for themselves, and Pauline Shannon for her children likewise, in the funds distributed by the Cherokee Nation theretofore; that judgment was rendered in favor of said parties and against the Cherokee Nation in the circuit court of said nation, and upon appeal to the supreme court of the Cherokee Nation that judgment was affirmed.

At the time said suits were instituted, and during the pendency of each in the courts of the nation, and at the time final judgment was entered, both George Shannon and Samuel Barbee, intermarried white persons, and husbands of the said Pauline Shannon and S. M. Barbee, respectively, lived with his wife and was acknowledged as a citizen of the Cherokee Nation by intermarriage; that neither of them had participated in the distribution of said funds; that neither of them were parties to either of said suits; nor did either of them make application to be made a party; nor was any claim made theretofore; nor has there been since on behalf of either of them for a distributive share of said funds, or any portion thereof, under said law (sections 130-133, article 12, Code, 1875).

Nineteenth. That the Cherokee national council, with the approval of the principal chief, on December 3, 1879, passed the following act:

AN ACT for Taking a Census of the Cherokee Nation for the Year 1880.

SECTION 1. *Be it enacted by the national council,* That two expert and responsible persons, one of whom talks (speaks) the Cherokee language, to be appointed by the principal chief (in each district), and who shall be resident of the district from which they are appointed, be and they are hereby directed and authorized to take

the census of their respective districts between the first day of March and the first day of May, 1880, and make full and certified returns thereof to the principal chief on or before the first day of June of said year. That said census takers before entering upon the duty hereby assigned to them shall take an oath for the full, impartial, and correct performance of the same, as hereinafter defined.

83 "SEC. 8. That it shall be the duty of said census takers to take a full and complete return of all persons found residing or sojourning within the limits of the respective districts at the time of making the enumeration, as required by the foregoing section. And said returns shall show the names of all heads of families, giving a complete registration of births, deaths, and marriages; also the age and sex; the names of all males above the age of eighteen years; the names of all females above the age of eighteen; the names of all males under the age of eighteen years; the names of all females under the age of eighteen years; the names, sex, and ages of all orphans under sixteen years; the names of all whites entitled by law to citizenship within the ages specified; the names of all whites not so entitled; the names of all colored persons entitled by law to citizenship, within said ages, and the names of all such persons not so entitled, and the names of all Indians not so entitled; also a report of the chief production of agriculture, including the number of horses, cattle, hogs, sheep, etc., during the year ending May first, 1880.

"SEC. 3. That it shall be the duty of the principal chief to cause ruled blanks to be prepared of a suitable and convenient form and furnish to said census takers, for the purpose of making the enumeration herein provided for, and said census takers shall be allowed three dollars a day in the performance of the duties hereinbefore imposed upon them.

"SEC. 4. That it shall be the duty of the principal chief to cause a summary of the returns of said census to be prepared and paid before the national council, together with the full returns of the same, at the beginning of the annual session thereof in 1880. And said returns shall serve as a basis for the representation of the several districts of the Cherokee Nation in the national council, in accordance with the amendment to the constitution dated November 21, 1886.

"SEC. 5. *Be it further enacted,* That all persons whose rights to citizenship in the Cherokee Nation shall be called in question, and who shall be reported to by the persons authorized by this act to take the census of the Cherokee people, on the list of doubtful persons, shall be required by the principal chief to appear before the commission on citizenship at Tahlequah during the month of September, 1880, for the adjudication of their claims to Cherokee citizenship.

"SEC. 6. *Be it further enacted,* That the sum of two thousand four hundred and sixty ($2,460) be and the same is hereby appropriated out of the money in the general fund not otherwise appropriated to defray the expenses of census takers and for necessary stationery, and the principal chief is hereby authorized to draw preferred warrant for the same."

Twentieth. That the names of the following intermarried white persons appear upon the census roll of 1880, referred to in secanin 1, act of Congress of July 28, 1898, and show the manner in which the admitted whites were enrolled:

No.	Name.	Nativity.	Age.	Sex.
1970	Walker, Sarah	A. white	23	F.
1963	Wallace, Martin	A. white	32	M.
1846	Weaver, Mary	A. white	40	F.
1825	Vickory, Mary	A. white	17	F.
1789	Thomas, William	A. white	33	M.
1373	Randolph, Martha	A. white	36	F.
1366	Rogers, John	A. white	35	M.
1346	Robins, Sarah	A. white	29	F.
1343	Quarles, William	A. white	39	M.
1178	Mulcar, Mike	A. white	36	M.

That an examination of said census roll discloses that it was made as provided and required by the act of the national council, approved December 3, 1879; and that appended to each name upon said roll is a memorandum or descriptive matter which shows whether or not, and if so, how such person became and was a citizen of the nation—that is to say, whether he was a Cherokee by blood, a Delaware, a Shawnee, a freedman, or an intermarried white person.

Twenty-first. That on the 12th day of August, 1902, the same being the day on which the act of Congress of July 1, 1902, was voted upon at a special election held in the Cherokee Nation for that purpose, there were then residing in the Cherokee Nation, approximately, 2,800 intermarried white men of voting age under the laws of said nation, and whose only claim to rights therein was and is based upon a marriage, prior to said election, in acordance with the laws of the Cherokee Nation respecting intermarriage of white men and foreigners; and that at said election held for said purpose, practically all of said white persons of voting age who had intermarried into the Cherokee Nation as aforesaid, were permitted to vote and did vote, and that more than 2,500 of said white persons voted in favor of said act of Congress; that the majority in favor of said act of Congress, on the face of the returns, including the votes of said 2,500 intermarried white persons, was 1,800 votes.

84 Twenty-second. Under the customs of the Cherokees a white woman intermarrying with a Cherokee citizen acquires the same rights in respect to property as a white man intermarrying with a Cherokee woman.

85 *Conclusions of Law.*

That such white persons residing in the Cherokee Nation as became Cherokee citizens under Cherokee laws by intermarriage with Cherokees by blood prior to the 1st day of November, 1875, are equally interested in and have equal per capita rights with Cherokee Indians by blood in the lands constituting the public domain of the Cherokee Nation and are entitled to be enrolled for that purpose, but such intermarried whites acquired no rights and have no interest or share in any funds belonging to the Cherokee Nation except where such funds were derived by lease, sale or otherwise from the lands of the Cherokee Nation conveyed to it by the United States by the patent of December, 1838; that the rights and privileges of those white citizens who intermarried with Cherokee citizens subsequent to the 1st day of November, 1875, do not extend to the right of soil or interest in any of the vested funds of the Cherokee Nation and such intermarried persons are not entitled to share in the allotment of the lands or in the distribution of any of the funds belonging to said nation, and are not entitled to be enrolled for such purpose; that those white persons who intermarried with Delaware or Shawnee citizens of the Cherokee Nation either prior or subsequent to November 1st, 1875, and those who intermarried with Cherokees by blood and subsequently being left a widow or widower by the death of the Cherokee wife or husband, intermarried with persons not of Cherokee blood and those white men who having married Cherokee women and subsequently abandoned their Cherokee wives have no part or share in the Cherokee property and are not entitled to participate in the allotment of the lands or in the distribution of the funds of the Cherokee Nation or people and are not entitled to be enrolled for such purpose.

BY THE COURT.

86 Departmental No. 76.

IN THE MATTER OF ENROLLMENT OF PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE

v.

THE UNITED STATES.

VII.—*Decree. Filed May* 18, 1905.

This case having been transmitted to this court by the Secretary of the Interior by letter dated February 24th, 1903, for the findings and opinion of the court in accordance with the provisions of section 2 of the act of Congress of March 3rd, 1883, entitled "An act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the Government," (22nd Stats. 485); and Congress by the act of March

3rd, 1905, entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30th, 1906, and for other purposes" having made the following enactment:—

"That in the case entitled 'In the matter of enrollment of persons claiming rights in the Cherokee Nation by intermarriage against the United States, departmental, numbered seventy-six,' now pending in the Court of Claims, the said court is hereby authorized and empowered to render final judgment in said case, and either party feeling itself aggrieved by said judgment shall have the right of appeal to the Supreme Court of the United States within thirty days from the filing of said judgment in the Court of Claims. And the said Supreme Court of the United States shall advance said case on its calendar for early hearing."

87 And the cause coming on to be heard upon the petition, answers, agreed facts, proofs and arguments submitted by the attorneys of the parties to the cause respectively and the court having heard and fully considered the same;

And it appearing to the court that all those white persons who married Cherokee Indians by blood subsequent to the enactment of the Cherokee law which became effective November 1st, 1875, and which declared that such persons by intermarriage acquired no rights of soil or interest in the vested funds of the Nation, had due notice of the limitations set upon their rights and privileges as citizens; and that those white persons who married Cherokee citizens by blood prior to said date, acquired rights as citizens in the lands belonging to the Nation and held and owned as national lands, except such of these intermarried persons as lost their rights as Cherokee citizens by abandoning their Cherokee wives or by marrying other white or non-tribal men or women having no rights of citizenship by blood in said Cherokee Nation;

It is by the court ordered, adjudged and decreed that such white persons residing in the Cherokee Nation as become Cherokee citizens under Cherokee laws by intermarriage with Cherokees by blood prior to the 1st day of November, 1875, are equally interested in and have equal per capita rights with Cherokee Indians by blood in the lands constituting the public domain of the Cherokee Nation and are entitled to be enrolled for that purpose, but such intermarried whites acquired no rights and have no interest or share in any funds belonging to the Cherokee Nation except where such funds were derived by lease, sale or otherwise from the lands of the Cherokee Nation conveyed to it by the United States by the patent of December 1838; that the rights and privileges of those white citizens who intermarried with Cherokee citizens subsequent to the 1st day of November, 1875, do not extend to the right of soil or interest in any of the vested funds of the Cherokee Nation and such intermarried persons are not entitled to share in the allotment of the lands or in the distribution of any of the funds belonging to said Nation, and are not

entitled to be enrolled for such purpose; that those white persons who intermarried with Delaware or Shawnee citizens of the Cherokee Nation either prior or subsequent to November 1st, 1875, and
88 those who intermarried with Cherokees by blood and subsequently being left a widow or widower by the death of the Cherokee wife or husband, intermarried with persons not of Cherokee blood and those white men who having married Cherokee women and subsequently abandoned their Cherokee wives have no part or share in the Cherokee property and are not entitled to participate in the allotment of the lands or in the distribution of the funds of the Cherokee Nation or people and are not entitled to be enrolled for such purpose.

BY THE COURT.

89 VIII.—*Application of Cherokee Citizens by Blood of the Cherokee Nation for, and allowance of, appeal.*

Departmental No. 76.

IN THE MATTER OF ENROLLMENT OF PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE,

v.

THE UNITED STATES.

The Cherokee citizens by blood of the Cherokee Nation, parties to this cause, by their attorney John J. Hemphill, on this 5th day of June, 1905, make application for and give notice of an appeal to the Supreme Court of the United States, from that portion of the decree in this case filed May 18th, 1905, which orders, adjudges and decrees that such white persons, residing in the Cherokee Nation, as became Cherokee citizens under Cherokee laws, by intermarriage with Cherokees by blood prior to the 1st day of November, 1875, are equally interested in and have equal per capita rights with Cherokee Indians by blood, in the lands, constituting the public domain of the Cherokee Nation, and in any funds derived by lease, sale or otherwise from the lands of the Cherokee Nation conveyed to it by the United States by the patent of December, 1838, and are entitled to be enrolled for that purpose.

(signed) JNO. J. HEMPHILL,
Attorney for Cherokee Citizens by Blood,
Parties to this Cause.

Filed June 5, 1905.

Order.

Appeal allowed this 20th day of June, 1905.

(signed) C. C. NOTT, *Chief Justice.*

90 IX.—*Application of the Cherokee Nation for, and Allowance of, Appeal.*

Departmental No. 76.

IN THE MATTER OF ENROLLMENT OF PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE,
v.
THE UNITED STATES.

The Cherokee Nation, party to this cause, by its attorney L. F. Parker, Jr., on this 6th day of June, 1905, makes application for and gives notice of an appeal to the Supreme Court of the United States, from that portion of the decree in this case filed May 18th, 1905, which orders, adjudges and decrees that such white persons, residing in the Cherokee Nation, as became Cherokee citizens under Cherokee laws, by intermarriage with Cherokees by blood prior to the 1st day of November, 1875, are equally interested in and have equal per capita rights with Cherokee Indians by blood, in the lands, constituting the public domain of the Cherokee Nation, and in any funds derived by lease, sale or otherwise from the lands of the Cherokee Nation conveyed to it by the United States by the patent of December, 1838, and are entitled to be enrolled for that purpose.

(signed) L. F. PARKER, JR.,
Attorney for Cherokee Nation.
By JNO. J. HEMPHILL.

Filed June 7, 1905.

Order.

Appeal allowed this 20th day of June, 1905.
(signed) C. C. NOTT, *Chief Justice.*

91 X.—*Application of Intermarried Whites, Parties in this Cause, for, and Allowance of, Appeal.*

Departmental No. 76.

IN THE MATTER OF ENROLLMENT OF PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE,
v.
THE UNITED STATES.

The intermarried whites, parties to this cause, by their attorneys, William Henry White, Harry G. Kimball, A. E. L. Leckie, and Creed M. Fulton, on the 8th day of June, 1905, make application for and

give notice of an appeal to the Supreme Court of the United States from all of the decree in this case filed May 18, 1905, except that portion which orders, adjudges and decrees that such white person residing in the Cherokee Nation, as became Cherokee citizens under Cherokee law, by intermarriage with Cherokees by blood prior to the first day of November, 1875, are equally interested in and have equal per capita rights with Cherokee Indians by blood, in the lands, constituting the public domain of the Cherokee Nation, and in any funds derived by lease, sale or otherwise from the lands of the Cherokee Nation conveyed to it by the United States by the patent of December, 1838, and are entitled to be enrolled for that purpose.

(signed) WM. HENRY WHITE,
HARRY G. KIMBALL,
A. E. L. LECKIE,
CREED M. FULTON,
Attorneys for Intermarried Whites.

Filed June 8, 1905.

Order.

Appeal allowed this 20th day of June, 1905.

(signed) C. C. NOTT, *Chief Justice.*

92 XI.—*Application of Persons Claiming Rights in the Cherokee Nation by Intermarriage for, and Allowance of, Appeal.*

Departmental No. 76.

IN THE MATTER OF ENROLLMENT OF PERSONS CLAIMING RIGHTS IN THE CHEROKEE NATION BY INTERMARRIAGE

v.

THE UNITED STATES

The persons claiming rights in the Cherokee Nation by intermarriage by their attorneys of record, James S. Davenport and William T. Hutchings pray that an appeal may be allowed them in the above entitled cause from a judgment rendered in said cause against them on the 18th day of May, 1905, and that the Clerk of the Court of Claims be directed to send the record and proceedings in said cause to the Supreme Court of the United States, and notice is hereby given of the application for said appeal.

(signed) WILLIAM T. HUTCHINGS,
JAMES S. DAVENPORT,
Attorneys for Persons Claiming Rights in Cherokee Nation by Intermarriage.

Filed June 15, 1905.

Order.

It is hereby ordered that the appeal in the above-entitled case t
the Supreme Court of the United States be and is hereby allowed a
prayed.

June 20, 1905.

(signed) C. C. NOTT,
Chief Justice of the Court of Claims.

93 Court of Claims.

No. 76 Departmental.

IN THE MATTER OF ENROLLMENT OF PERSONS CLAIMING RIGHTS I
THE CHEROKEE NATION BY INTERMARRIAGE
vs.
THE UNITED STATES.

I John Randolph Assistant Clerk of the Court of Claims certif
that the foregoing are true transcripts of the pleadings in the abov
entitled cause, of the opinion of the court—of the findings of fa
and conclusions of law filed by the court—of the decree of the cour
of the application of the respective claimants for appeal to the S
preme Court of the United States and of the allowance of the sam

In testimony whereof I have hereunto set my hand, and affixe
the seal of said Court of Claims this 15 day of July A. D. 190

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 19,921. Court of Claims. Ter
No. 419. Daniel Red Bird *et al.*, citizens of the Cherokee Nation b
blood, appellant, *vs.* The United States. File No. 19,922. Ter
No. 420. The Cherokee Nation, appellant, *vs.* The United State
File No. 19,923. Term No. 421. Francis B. Fite *et al.*, interma
ried white persons, claiming to be entitled to citizenship in the Cher
kee Nation, appellants, *vs.* The United States. File ..o. 19,92
Term No. 422. The Persons Claiming Rights in the Cherokee N
tion by Intermarriage, appellants, *vs.* The United States. Filed Oct
ber 6th, 1905. File Nos. 19,921–2–3 & 4.